United States Court of Appeals
for the Second Circuit

APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

77-1497

UNITED STATES OF AMERICA,

Appellee,

-against-

Docket No.
77-1497

MOSES WEINDLING and
PATRICIA JOANNE McINTYRE

Appellants.

B

P/S

On Appeal from the United States District
Court for the Southern District of New York

JOINT APPENDIX

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Q You mean you vacillate. Sometimes you are undercover and sometimes someone else is undercover?

A Yes.

Q You don't get a permanent assignment as undercover, is that correct?

A That's correct.

Q Let's say during this period around April of 1977, for how long a period of time had you been undercover?

A I was undercover in this particular case in April. That's the only case I was undercover in.

Q What grade detective are you?

A Third grade detective.

Q Are there any grades above third grade?

A Yes, there are.

Q Two other grades?

A Yes, there are.

Q What determines, if you could tell us, promotion in the detective squad in New York City?

A At the present time?

Q At that time in April.

A Nothing.

Q Nothing?

A There has not been grade in the detective division for three years and the only grade that was

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given out was recently with respect to the Son of Sam incident. That was the only grade that was made.

Q Everybody else is third grade?

A There has been a freeze insofar as advancement within the detective division for the past three years.

Q But in the Son of Sam case there were grades made?

A That's correct.

Q If you make a particularly good arrest or collar there is always the hope you will be recognized, isn't that true?

A At the present time no, it's not. Something like the Son of Sam case, the sensationalism of it, being a political year, there were grades given out, yes.

Q But if you don't perform in the detective squad you might be transferred back to uniform, isn't that true?

A Yes, that's true.

Q It would be fair to say that they expect a detective to perform, isn't that true?

A That's true.

Q Detective Minichiello, you say that there came a time you were introduced to someone by the name of Steve?

A Yes.

Q Have you lived in New York all of your life?

A Yes, I have.

Q Do you have family in New York?

MR. ANOLIK: Objection, your Honor. Irrelevant and immaterial.

THE COURT: I will allow it because I assume that the Assistant has some idea of relevance here. I will allow it at this point.

Overruled.

Q Do you have family in New York?

A Yes, I do. I have parents, sisters, and a brother and a child living in New York City.

Q How old is that child?

A Eleven years.

Q How old were you when you became a police officer?

A I was 21 years old.

Q How long was it before you became a detective?

A I was promoted to detective in 1969.

Q So you had been on the force how many years?

A Fourteen years.

Q Have you ever received any awards and commendations for bravery and excellence in service during the time --

MR. ANOLIK: I have an objection.

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THE COURT: I will overrule the objection.

Q Excellence in the form of duty during the time you have been a police officer?

A Yes.

Q Briefly describe what those awards and commendations have been.

A I received the Walter Scott medal for valor from Mayor Lindsay in 1968, for a shootout with a subject who had held up three liquor stores and shot another police officer.

MR. JOY: I object to that. It's inflammatory.

THE COURT: Overruled.

A I received a letter of commendation from Louis J. Lefkowitz.

THE COURT: Come up to the side bar.

(At the side bar.)

THE COURT: I suppose Ms. Cote can speak for herself. Unless I miss my guess, she is concerned that you have suggested to the jury that this man has perjured himself about the three and a half ounces in order to make a case to enhance his reputation in the police force, and she is trying to counter that suggestion by showing that he already had a good reputation and obviously, to the contrary, he had a desire to maintain it rather than

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destroy it by a false accusation.

Am I correct in that?

MS. COTE: Yes, your Honor.

MR. ANOLIK: I don't think they have a right to bring out self-serving statements. For all I know these are hearsay. How am I going to judge he is telling the truth even now? He can say anything he wants. This comes right under the precept of U.S. against Baum, your Honor. Baum says that they may not try a case by ambush.

THE COURT: Is this the McMahon case?

MR. ANOLIK: That's correct.

THE COURT: It has nothing ty do with this.

MR. ANOLIK: It was my case.

THE COURT: I don't think it applies.

MR. JOY: I think this is reputation. What they are trying to do is establish reputation. I don't think the way that you do that is by having self-serving statements.

THE COURT: He is saying, "I got particular awards".

MR. JOY: There is an implication --

MR. ANOLIK: I have interesting cross-examination. Let him do it.

(In open court.)

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THE COURT: Objection overruled.

Q I believe you were about to describe a citation you received from Attorney General Lefkowitz. Describe that for the jury.

A I received a letter of commendation from Attorney General Lefkowitz regarding the incident I described earlier. That was a shootout with a suspect who had held up three liquor stores and shot another policeman. In addition, I received an award from the American Legion. I received eight excellent police duty awards that ranged from apprehending rape suspects armed with weapons, guns, knives, burglary suspects --

MR. ANOLIK: To preserve the record, we want to move for a mistrial at this time.

MR. JOY: I join in that.

THE COURT: Motion denied.

A A burglary suspect that attempted to hit me with a hammer, I received a meritorious police duty award for that incident.

Most recently I received an award from Mayor Beame for my work regarding the Son of Sam investigation.

Q You were assigned during the Son of Sam investigation to the New York Drug Enforcement Task Force?

A Yes. But I was sent over to the Queens

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Homicide Task Force to work on the Son of Sam investigation two and a half months prior to its conclusion.

Q I believe you described awards and citations.

Did you receive any other commendations during your service as a police officer?

A I received a commendation that involved the disarmament of a young man who had pointed a gun at me and another police officer.

Q Have you ever been injured in the line of duty?

A Yes, I have.

Q On how many occasions?

A I have been thrown from the boardwalk in Coney Island. I was kicked in the groin. I was thrown down a flight of stairs. Approximately four different times I have been injured in the line of duty.

Q You have told us three. Do you remember the fourth?

A The other one was a sprain to my left hand. Grappling with a robbery suspect.

Q Detective Minichiello, have you ever received or do you know if it's customary for police officers to receive promotions for lying under oath in court?

MR. ANOLIK: I object to that. That's for the jury to determine.

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THE COURT: I will sustain that objection. Not on the ground you urge, however.

MR. ANOLIK: I understand, your Honor.

Q When did you first meet the informant in this case, Detective Minichiello?

A On the 27th of April at about 4:00 P.M. in the afternoon.

Q After meeting the informant, did you ever learn whether or not the informant and Mr. Weindling had known each other prior to the occasion when you first met Mr. Weindling?

A Yes.

MR. ANOLIK: Objection. Hearsay.

THE COURT: That is overruled.

A Mr. Weindling told me that they had met in the Army and the informant told me they had met in the Army.

Q Did you learn during the course of your investigation whether or not the informant had ever known Ms. McIntyre before you met Ms. McIntyre?

A Yes.

Q Please describe that.

A When Ms. McIntyre entered the restaurant she embraced the informant, Steve, and gave him a big kiss and indicated to him that she had not seen him in a long time.

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to the back. I arrested Moses Weindling.

Q And Detective Hansen immediately went to arrest Ms. McIntyre?

A Detective Hansen was standing at the top of the stairs. I said, "Go down and get her".

Q So a matter of just seconds elapsed, isn't that true?

A At that point it might have been closer to a minute.

Q Closer to a minute, but you are not sure?

A I'm not exactly sure.

Q But certainly it was a very short period of time, possibly less than a minute, the arrest of Ms. McIntyre also occurred?

A Yes.

Q Did Mr. Hansen tell you he found Ms. McIntyre at a phone booth?

A Yes.

Q Apparently making a call because he said the coin returned, she was not able to complete the call.

A I believe that's correct, yes.

Q You say that you saw two women at this table here which you designate A and A, is that right?

A Yes.

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Q You didn't know who those women were, did you?

A At the time, no.

Q At any time?

A No.

Q Do you know now who they are?

A No, sir.

Q As far as you could observe did they talk to Mr. McIntyre?

A No, sir.

Q Did they talk to Mr. Weindling?

A No, sir.

Q Were there other people in the restaurant having lunch or drinking?

A Yes, sir.

Q YOu have already testified that in order to use the ladies' facilities you had to go downstairs.

A That's correct.

Q So other than the fact that you observed one or both of these women at some point in time going downstairs you saw nothing else they did, isn't that true?

A That's correct.

MR. ANOLIK: I have no further questions.

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2:05 P.M.

THE COURT: I think the record should show the question is one of Mr. Anolik asking about his knowledge of these people. In accordance with our side bar conference this opens the door to the Government's inquiry.

JOHN DeROSA resumed.

THE COURT: The entry into this area of inquiry should come from what is his state of knowledge about these people and not from whether he conducted an investigation last week. That may be the subject of further cross-examination. Let's await the event.

MS. COTE: The Government wants to develop through this witness he began to investigate who exactly the brunette was just during this past week. It does not imply that at the time of the arrests any investigation was undertaken.

THE COURT: I will permit that to a limited degree only to establish the time.

MS. COTE: Very brief, your Honor.

(In open court; jury present.)

BY MS. COTE:

Q Do you recall being asked on cross-examination whether or not you knew who the young brown-haired -- by the way that's like brunette --

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Q -- woman was who followed Ms. McIntyre downstairs at Grass Restaurant was?

MR. ANOLIK: I object to the characterization. The word "followed" I object to.

THE COURT: In subsequent time she went downstairs.

MR. JOY: No objection to that.

A Yes.

Q Were you instructed during this last week to conduct an investigation relative to the identity of that brunette woman?

MR. ANOLIK: I object.

MR. JOY: I object.

THE COURT: Overruled.

A Yes.

Q Do you have an idea as to who that woman might be?

MR. ANOLIK: Objection to "idea".

THE COURT: I will sustain it. What is your knowledge if any with regard to that woman?

Q Do you now have some knowledge that would lead you to believe who may be the young brunette woman?

MR. ANOLIK: I object to that.

MR. JOY: I object.

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THE COURT: What is your state of knowledge as to that person?

THE WITNESS: I have an idea of who it might be.

MR. JOY: I ask that that be stricken as not responsive.

THE COURT: I will overrule that.

Q Have you uncovered the identity of a particular person whom you believe may be the brunette?

A Yes, I have.

Q Do you know how that particular person is employed?

MR. ANOLIK: I object to that. We don't know who it is yet.

THE COURT: At this point I will sustain the objection.

Q Do you know the name of that person?

A Yes, I do.

MS. COTE: At this point does the Court require us to reveal that name?

(Pause.)

Q Please tell the ladies and gentlemen of the jury what the name of that particular individual is.

A Patricia Thomas.

Q Do you know how Ms. Thomas is presently employed?

A She is a flight attendant for EasternAirlines.

Q Do you know what Ms. McIntyre's job was when she was arrested?

MR. JOY: I object to that.

THE COURT: Overruled.

A Flight attendant for Eastern Airlines.

Q Do you know what if any relationship there is between Ms. Thomas and Ms. McIntyre?

A Yes. They are close friends and at one time they resided together.

MS. COTE: That is all, your Honor.

CROSS-EXAMINATION

BY MR. ANOLIK:

Q Could you please describe this Patricia Thomas a little more for the benefit of the jury?

A Yes. She is five, six to five, seven. About 115 pounds, black hair, attractive girl, hazel eyes.

Q Did you see her in the restaurant?

A Excuse me?

Q Did you see her in the restaurant?

A I'm not positive at this time it was the girl that was in the restaurant. I am not 100 per cent sure.

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A No. I had no discoloration of my nose.

Q You didn't say that to Tony?

A I didn't say that. My nose was not discolored. I didn't see any reason for him even saying that. I had no conversation about drugs at that time.

Q Did you ever discuss with Mr. Weindling any plans to distribute or sell cocaine?

A No. Moses did not sell cocaine.

Q Did you see any cocaine being passed at The Sixish Bar?

A No, there was no cocaine passed in front of me ever that day or the next day.

Q Did you see any cocaine passed in The Grass Restaurant?

A No, I did not. I honestly did not.

Q Did you see Pat Thomas in the restaurant, in The Grass Restaurant on the 28th?

A I didn't see her. If I had seen her I would have recognized and said hello to her. I'm not saying she was not there. I'm saying that I did not see her, no.

Q Did you see anybody else in the Grass Restaurant that you knew?

A No. I didn't see anybody that I knew aside from Steven and Tony.

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Q Wasn't that setting right on a table in Mr. Weindling's apartment at York Avenue?

A I was there once.

Q That apartment only had a bedroom and one other woom, the living-room, right?

A Yes, and a kitchen.

Q A small kitchen. And that was right in the living-room, wasn't it?

A I can't say -- I would not even remember. I was honestly only there once.

Q Do you know what a triple beam scale is used for?

MR. ANOLIK: I move for a mistrial.

THE COURT: The motion is denied.

You may answer.

A No.

Q Have you ever seen anything like this triple beam scale either at that apartment on York Avenue or anywhere else?

A I didn't even take science. I have not seen one --

THE COURT: The question is whether you have ever seen a scale like this.

THE WITNESS: Maybe in high school.

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Q Mr. Weindling didn't have any scale like this in the apartment that he lived in when you were with him, right?

A No.

Q In fact he didn't have any scale, right?

A That's right. When we lived together?

Q When you lived together.

A That's right.

Q No scale at all?

A No. Just one that he put -- it is a small kitchen thing that you put for postage. It's a postage scale.

Q So he had a small postage scale in his kitchen?

A Yes.

Q What quantities could that small postage scale weigh?

A I used to use it for a diet, I was always watching my weight.

Q What quantities could that postage scale weigh? How many grams or ounces?

A It had two columns, one for how much the postage was and one for weight.

Q How much was the weight?

A I don't know. I really don't remember. Maybe

MISS COTE: May it please the Court, your Honor, Judge Owen, and ladies and gentlemen of the jury:

We are nearly at the end of the trial. All the evidence is in. It has been a brief case, but it has been an important one. It is important to the defendants because they are charged with serious crimes, and it is important to the Government who has an interest in protecting the public against the kind of crimes they are charged with. It is exactly in courtrooms like this that those two interests are weighted and both of them are protected.

That's why we have a jury system. That's why now the attention in this courtroom shifts. It shifts quite dramatically away from this side of the jury bar to that side, to you, the fourteen jurors.

We all have special skills that we bring to this courtroom. We, the lawyers, have special skills in presenting the facts to you and in posing questions to the witnesses. Some of us have developed those skills mainly from law school; others through years of practice before the bar. We have done our work. It is pretty much over for us except for these summations.

His Honor, Judge Owen, has his own special skills, skills that he has used to supervise and conduct

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this trial, to rule on difficult questions of law that always present themselves in criminal trials.

Right now the most important skills in this courtroom are the skills that each of you possesses, that each of you has brought into this courtroom at the time you came here, and that is your good, basic, common sense. That's why you were selected, and it is on that common sense that you are going to rely to reach a verdict in this case.

In fact, that's exactly what you are bound to do by your oath. You are bound by your oath to decide this case clearly on the evidence, to apply your common sense to the evidence that has come in during this trial, and to reach a verdict that is fair under the law, a verdict without fear, prejudice, influence, or sympathy -- sympathy for either the defendants or the Government. That's what the Government asks you to do, and I am sure it is what each of the defense attorneys ask you to do.

What is the evidence in this case? You know that the evidence in this case is not the questions the lawyers have asked. You know that it is not the opening statements. What I told you in my opening statement, that was not evidence; that was merely an outline of what the Government intended to prove at this trial. What the

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defense attorneys said in their opening statements, that's not evidence either.

So, when Mr. Anolik told you in his opening that Mr. Weindling became addicted to cocaine when he was in the army, that's not evidence. There is no evidence in this record at all that Mr. Weindling even used cocaine in the army.

In fact, Miss McIntyre told you that Mr. Weindling used cocaine whenever he felt like it in her presence, and yet she didn't even know he was using cocaine until after she had been living with him for two months.

Similarly, when Mr. Joy said in his opening that Miss McIntyre was just one of Mr. Weindling's girlfriends, that's not evidence. In fact, there has been no evidence that Mr. Weindling even dated anyone else, much less had another girlfriend. So those openings are not evidence, and neither is this summation evidence.

What I am going to try to do in this summation is to give you a picture, a picture of the evidence as the Government sees it. I am going to tell you what my recollection of the evidence is, what my recollection is of what the witnesses testified to; it is my explanation of the Government's view of the whole case put together.

Similarly, the defense attorneys who sum up, pgwis5

what they say is not evidence, it is argument; it is part of each attorney's special skill.

You have to apply your common sense to the evidence, and the evidence in this case is made up, among other things, of testimony. You heard from a New York City detective who worked undercover in this case, and you heard from four agents and officers of the Drug Enforcement Task Force who watched these two defendants as they participated in the three drug transactions. You heard from those same agents and officers as they testified to the statements the defendants made after they were arrested. You heard from the DEA chemist and the waitress who saw Miss McIntyre talk to a brunette in the Grass Restaurant, and you heard from Miss McIntyre. What they testified to, all of that, is evidence. Evidence is the chemist's report, the cocaine spoon, the briefcase, the strainer, the handbag Miss McIntyre carried to the Grass Restaurant, and the jumpsuit Mr. Weindling wore at the Grass Restaurant, and it is also the picture of Miss Thomas.

I think the Judge will tell you that you have a right to all of the exhibits in this case. You can ask to see them in the jury room. The Government would ask that you do so because it is only on the evidence that you can reach a verdict in this case.

What I am going to try to do --

MR. ANOLIK: Objection, your Honor. Objection -- or lack of evidence.

THE COURT: Evidence or the lack of evidence. Proceed.

MISS COTE: What I am going to do in this summation is try to bring all the pieces of evidence together, because they came into evidence not necessarily in any chronological order. You remember the testimony of Miss Jeronimo. She was one of the last Government witnesses called. She testified to seeing Miss McIntyre in the bathroom at Grass Restaurant before Miss McIntyre was even arrested. But you had already heard about those arrests far earlier in the testimony, so what I will try to do is put all the evidence together so that it all makes sense and you can see it as a whole.

I want to tell you just before I begin that in commenting on the evidence, a piece of testimony in the record, I may make a mistake, and when I say "a mistake," I mean something I say may be different from the way you remember it; it is your recollection of the evidence that always controls. So if that happens, I want to tell you, it is inadvertent. It is simply an error on my part, a mistake of my memory; but you do know there are verbatim notes of these proceedings and you have a right to ask that any section or portion of the trial be read back to you. Just send a note out and it will be done.

Simply put, this case has been about three different drug transactions that took place last April.

On April 27th, at the Sixish Restaurant, Moses Weindling gave this sample of cocaine to Detective Minichello. That is Government Exhibit 1 and it is in evidence. After he gave that sample of cocaine to Detective Minichello, he called Patricia McIntyre and had her join him as he negotiated the sale of three and a half ounces of cocaine for the following day.

Miss McIntyre was not just present during those negotiations. She participated because part of the price for that three and a half ounces was to be made up by money to be placed on the number 357 every day for a month. She contributed that number, the number 357.

On the next day, Moses Weindling and Patricia McIntyre together went to Grass Restaurant, and together they gave a second sample of cocaine to Detective Minichello. That second sample is also in evidence; it is Government Exhibit 2. They gave him that sample in lieu of the package, in lieu of the three and a half ounces, which was not in the restaurant yet.

After lunch, Miss McIntyre went and got that three and a half ounces, and she carried it in her purse back to the table and gave it to the defendant Weindling. The defendant Weindling opened that purse and gave it to Detective Minichello, and that's the third transaction.

After Detective Minichello looked at the three and a half ounces, he gave it back to Moses Weindling, left the table, and gave the arrest signal. Miss McIntyre, at that point, got rid of the package, and following their arrests, each of the defendants made admissions with respect to their role in this conspiracy.

How has the Government proved all of this to you? Well, to begin with, you heard from Special Agent Sandler, how he met an informant who worked for the Drug Enforcement Administration about a month before these events in April began, and that informant told Agent Sandler that he could introduce someone to Moses Weindling, Moses Weindling, who was both a user and a dealer in cocaine.

I think it is appropriate for me to pause at this moment and address myself to what is one of the so-called defenses in this case, and that is that Moses Weindling is merely a user of cocaine. Moses Weindling is not on trial here because he uses cocaine. That is not the

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crime charged in any of the counts in this indictment. The government submits it is not a defense to any of the charges in this indictment.

There is no evidence -- and I want to stress this to you -- in this record that Moses Weindling was so unable to form the necessary intent to commit the crimes charged here because he used cocaine. In fact, I will ask you to really step back from it and think about it. Look at the evidence and ask yourselves this: Doesn't the fact that Moses Weindling is a user of cocaine really give him both a motive and an opportunity to indeed be a seller of cocaine?

First of all, cocaine is expensive. There is no doubt about that. To pay for cocaine it makes sense to buy extra, cut it, and sell it at a profit. If you are a user of cocaine, you have a source. It does not fall from the sky; you get it from somewhere, so you already know where to get it.

So this defense put forth by Mr. Anolik, the Government submits, is not really a defense at all. It is really a sort of admission. Mr. Weindling had both the motive and the opportunity to commit the crimes with which he is charged in this indictment.

So I ask of you, don't be misled by any argument

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about Mr. Weindling being a user of cocaine. That is not in issue here.

Now, to get back to the evidence, the actual evidence, in this case.

You heard how Detective Minichello was chosen to assume an undercover role to purchase cocaine from Moses Weindling. He was chosen because it is a policy not to have the informant handle any drugs; so on April 27th that informant came to the DEA, the Drug Enforcement Administration officers, and attempted to reach Moses Weindling on the telephone. He was unsuccessful.

So the informant with Detective Minichello and Agent Sandler get in a car and they go to the Upper East Side, and there he, again, makes a phone call; this time he gets through to Moses Weindling and they arrange to meet at the Sixish Restaurant.

Shortly thereafter the informant and Detective Minichello arrive at Sixish Restaurant. They wait a few minutes, and then Moses Weindling enters. After the preliminaries, they get down to business, and the business is the sale of cocaine.

At that point Moses Weindling gives Detective Minichello the sample, Government Exhibit 1, to induce him to buy a large, a much larger, quantity of cocaine. This transfer in and of itself, the transfer of this sample of cocaine, is a crime. That is the crime charged in Count 2 of this indictment.

After Moses Weindling gave Detective Minichello that sample, he told him to check it out, gave him his own cocaine spoon, and from the description that Miss McIntyre gave you, the coke spoon she used last January when she tried coke, maybe it was the same coke spoon, so Detective Minichello goes to the bathroom. You heard him: he puts the coke spoon in the sample so if it should be inspected it looks like it has been used. He -returns to the table and carefully following procedure makes sure that when Moses Weindling says to the informant, "You check it out," that he hands him the coke spoon but not the cocaine. He kept control of that cocaine, and you have it here.

After the informant had tried the cocaine and supposedly that's what Mr. Weindling had thought was going on, the informant came back from the bathroom, returned the coke spoon to Detective Minichello, and Mr. Weindling asked for the coke spoon back and let Detective Minichello keep the sample.

Here is another red herring that Mr. Anolik has tried to introduce in this trial. Mr. Anolik questioned

Detective Minichello. He said, "Isn't it incongruous that he, Moses Weindling, would keep a little inexpensive coke spoon and yet give you a very expensive sample of cocaine?"

Mr. Anolik acted like that didn't make sense at all. I tell you, I submit to you, that, in fact, the only way it makes sense is if you see that sample of cocaine for what it was, and that is an inducement to buy a far larger quantity from the same person. Moses Weindling was telling Detective Minichello, "The large amount you are going to get from me is the same quality as what you have just tried here. Here, look at it. Check it out."

And the large amount he was negotiating to sell Detective Minichello was going to cost at least $3400, and at the time they were thinking about four and a half ounces instead of three and a half, $4,600 worth. So does it really make any sense except when you look at it in the framework of that larger sale to think Moses Weindling would hand over a couple of hundred dollars' worth of cocaine?

After the transfer of that sample, the negotiations began in ernest. Moses Weindling told Detective Minichello, "Look, I have four and a half ounces back home, but I have other customers too, and I can only give you three and a half tomorrow." He told him that if he could

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give him the whole four and a half it would cost $4,600.

Detective Minichello said, "Gee, that's a pretty stiff price, a little too high."

Moses Weindling said, "Look, I sell good stuff, good stuff."

At this point Weindling interrupted the negotiations and he said, "I am going to call 'my lady'".

He went and telephoned Patricia McIntyre and she came on her bike and Weindling brought her in.

Miss McIntrye greeted the informant when she arrived; she told Detective Minichello about her job with Eastern Airlines, that she was a stewardess, and even about a recent trip to Pittsburgh with Mr. Weindling.

After this, they got down to the nitty-gritty of the price negotiations for the three and a half ounces, and it was Patricia McIntyre, the woman sitting right there, who supplied the number they would play in combination with Detective Minichello for one month, the number 357. This was to be worth approximately $200.

This is important. Miss McIntyre is contributing part of the price for the cocaine that Detective Minichello is to buy because the price was to be made up partly in cash, $3,400 and partly in the action, placing that bet with Detective Minichello.

So they continue their negotiations, set the price, and agree to meet the next day at the Grass Restaurant.

Less than an hour later, Moses Weindling called Detective Minichello on the undercover phone at the Task Force office. He told him that his customer had cancelled and he could sell him the whole four and a half ounces the next day for $4500.

The next day arrives, the 28th of April. Steve, the informant, and Detective Minichello arrive at the Grass Restaurants. Agents Sandler, Panessa, and Daly are already there seated, as it turned out, at the next table.

Before an hour had passed those three agents had left. They were replaced at the bar by Investigator Hansen and Detective Campbell.

Moses Weindling and Patricia McIntyre arrive shortly after Detective Minichello and the informant. Weindling is in his new jumpsuit and knee-high boots, and Miss McIntyre is in her white jumpsuit and her gold earrings. Mr. Weindling was carrying this briefcase, and Miss McIntyre was carrying this bag (indicating.)

When Detective Minichello asked for the package, Weindling told him he could only sell him three

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and a half ounces.

Step back and think about this for a minute. Put a couple of different pieces of evidence together. The difference in price between three and a half ounces and four and a half ounces is about $1,000.

Mr. Weindling paid for lunch at Grass that afternoon. Mr. Weindling told Detective Minichello that he had to pay $50 to have an accomplice in the restaurant that afternoon to bring the package there. When he was arrested, Mr. Weindling had $900 approximately-$892.50 on him.

I submit that when Mr. Weindling sat in Grass Restaurant that afternoon he had the proceeds in his pocket of the sale of one ounce of cocaine.

Mr. Weindling told Detective Minichello that neither he nor Miss McIntyre had the package on them right then; instead, he pulled a plastic bag from his boot, this plastic bag right here, Government Exhibit 2 in evidence, and he gave it to Detective Minichello. He kept insisting that Detective Minichello try that sample in order to divert his attention from the fact that they didn't have the three and a half ounces right there; they didn't have the package yet.

Moses Weindling said, "This sample comes right

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from the package," and Miss McIntyre said, "It is good stuff. I tried it last night; in fact, it was so good, it hurt my nose. Look, you can see the mark."

The transfer of the second sample of cocaine is also a crime. That's a crime charged in the third count of the indictment. Both Patricia McIntyre and Moses Weindling are charged with that crime.

Moses Weindling handed Detective Minichello that sample, and Patricia McIntyre aided and assisted him in that transfer.

Then there were more negotiations for the sale. Weindling wanted $3400 up front, that is, before he had to hand over the cocaine. They arranged that when the drugs arrived at the table, Detective Minichello would get a chance to see them, and then the drugs would be held there. Detective Minichello would have to go to the car, get the money from the trunk, return to the table, pay off Moses Weindling, and then he would get the drugs.

Weindling stressed how Miss McIntyre would be inconvenienced if she had to produce the drugs right there. He stressed how he had been inconvenienced by having to do the deal in the restaurant instead of his his apartment. You remember his words as Detective Minichello quoted them? "A lion never leaves his den."

He said then at that point, "I had to pay $50 to have somebody in the restaurant to help me with this deal." He said tHat that sample, Government Exhibit 2 alone, would cost him $200."

When Detective Minichello countered by saying, "You are really getting something you want: You are getting hard cash from me," Weindling told him, "That's okay. I also get clothes for my cocaine. I got this blue jumpsuit by trading cocaine, and I get jewelry" -- pointing to Miss McIntyre's gold earrings.

Then, when they tried to find out Detective Minichello's operation, he pointed to his briefcase and told Detective Minichello he had strainers to help cut the coke. That's dealers' language.

MR. ANOLIK: I object to that, your Honor.

THE COURT: Overruled.

MISS COTE: That's dealer's language for diluting cocaine.

You have seen the strainers, ladies and gentlemen. That's Government Exhibit 3A; they were taken from that briefcase, and one of those strainers and one coke spoon had cocaine traces on it.

Weindling also described in detail what Detective Minichello was going to get. He said, "There are three little separate bags. One has one ounce, one has two ounces, and one has a half ounce, all with a certain number of rocks, just like this sample."

Weindling bragged during the course of that afternoon about what a cleaver dealer he was, how he had dealt drugs in the army, and the Army kept him longer to try to figure out how he did it. Perhaps it was the same experience that Weindling was referring to when after his arrest he got into that police car and told the officer, "Officer Rinaldi, that he cooperated once before while in the Army but it had not turned out well.

In any event, Moses Weindling and Patricia McIntyre put Detective Minichello off, and instead of giving him the package of three and a half ounces right away had him wait for two hours while they finished lunch. By this time, Detective Minichello had lost track of what surveillance agents were in the restaurant. In fact, he could no longer see any of them. We know that Detective DeRosa and Agent Mahone, Detective Campbell, and Investigator Hansen were all sitting around the bar hidden from Detective Minichello's view by two large pillars. They, however, were able to see at least one of them, Detective Minichello, by looking through the reflections in the mirror in one of those bars and by looking around one of

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the other pillars.

Also, what those agents saw in addition to watching Detective Minichello was two women seated at a table very close to the bar, a table from which you could see Moses Weindling and Patricia McIntyre seated with Detective Minichello and the informant. They had arrived in mid-afternoon. At one point, about 4:30, the older of those two women, got up, left the table, and went downstairs. It was at that point that Moses Weindling looked at Patricia McIntyre and she got up and left the table and went downstairs.

Shortly thereafter, as Detective DeRosa told you, the older woman came up, and the younger woman, the brunette, went downstairs. The brunette joined Miss McIntyre in the bathroom, and the two of them talked intently for a short time, three, four, five minutes. They let it be known that they wanted to be in private, because when Miss Jeronimo came down, a waitress working at a busy restaurant, to use that bathroom, the way they looked at her made her wait outside.

After she could wait outside no longer, because her duty pressed, she went into that bathroom, and as she stood in that stall, she watched as the brunette said to Miss McIntyre, That's the best advice I can give you."

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What advice was she giving her? They obviously knew each other from the way they were talking.

MR. JOY: I object to speculation, your Honor.

THE COURT: Overruled. It is argumentative.

MISS COTE: Was the burnette the courier who had the three and a half ounces that Miss McIntyre and Mr. Weindling were going to sell? Had the brunette seen the four surveillance agents at the bar, although hidden from Miss McIntyre and Mr. Weindling yet visible to her? Had she became suspicious that they were cops?

Anyway, at this point, the brunette left the bathroom, and we know from Detective DeRosa's testimony that she did not return upstairs.

Shortly thereafter, Miss Jeronimo followed Miss McIntyre out and heard her exclamation to herself as she mounted the stairs.

Was Miss McIntyre becoming nervous after listening to her friend's advice?

Detective DeRosa watched as Miss McIntyre returned to the table. She gave her purse to Moses Weindling and said, "Here, honey," before she sat down.

Weindling took that purse and unzipped it. He handed it over to Detective Minichello. Detective Minichello opened up the white envelope, that same white

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envelope that Miss Jeronimo told you that the agents were looking for when they came back to search the Grass Restaurant later that afternoon. Inside that white envelope there was a small round bag like you would get in a drug store, and that was ripped, that brown bag, and you saw three individual plastic bags within it. Through those plastic bags, he felt the powdery rocks that Moses had described to him.

When the defendant McIntyre and the defendant Weindling held those drugs in their hands, intending to sell them to Detective Minichello for $3400, they were committing a crime, and that's a crime charged in the fourth count of this indictment.

How do we know that the three and a half ounces charged in that fourth count are, in fact, cocaine? His Honor will charge you that you don't have to be a chemist. You could look at a variety of factors to make a judgment as to whether or not it was, indeed, cocaine. After all, you have the defendant's own word for it. You have the price that was to be paid for it.

MR. ANOLIK: I object, again, your Honor. I object to that last statement. I think it is very -- I objected at the beginning of the trial.

THE COURT: I think Miss Cote is referring to

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the testimony of Detective Minichello, what he was told about the contents.

MR. ANOLIK: I am not sure.

THE COURT: I assume that's it?

MISS COTE: Yes, your Honor.

I will rephrase it to make it clearer.

THE COURT: Proceed.

MISS COTE: You heard Detective Minichello relating how Moses Weindling and Patricia McIntyre described that three and a half ounces, the three and a half ounces she tried the night before, the three and a half ounces that Moses described in such detail, so many rocks per bag, and so many bags.

You have the secrecy with which that three and a half ounces was handled, the need for an accomplice in the restaurant.

All of these factors you can piece together whether or not that substance was, indeed, cocaine.

When that cocaine arrived at the table, Moses Weindling all of a sudden changed all the plans. He suggested that Detective Minichello take the purchase with him. Detective Minichello was flustered. He feels foolish carrying a woman's purse and he doesn't see any of his team in the restaurant so he can't give the signal right then and there to arrest the defendants. He leaves the purse with Moses Weindling and he goes to his car and he gives the signal there. The agents at the bar see that signal through the window and they arrest Mr. Weindling and the informant seated right there at the table; they take Mr. Weindling's briefcase. They do this by telling Moses Weindling in a loud voice that they are police and that he is under arrest.

Then they go to arrest Miss McIntyre. Miss McIntyre is not at the table because after Detective Minichello left she got up from that table and she went downstairs.

Investigator Hansen finds her at the telephone, a few steps from the stairs and a few steps from the ladies' room. He arrests her. Detective DeRosa estimated she had been downstairs by herself without surveillance nearly a minute. Investigator Hansen estimated nearly a minute. She had obviously just begun to make a phone call because when Investigator Hansen arrested her, he told her to hang up the phone, her change came back, and he told her, "Retrieve it; get it."

After taking Miss McIntyre upstairs, Investigator Hansen hands her purse to Detective DeRosa. He looks inside, he inspects it; the three and a half ounces of cocaine are no longer there.

Meanwhile, the officers have simulated an arrest of Detective Minichello and the informant. Detective Minichello has been moved outside, and in the confusion everyone assumes that someone else has the three and a half ounces of cocaine. It is only after everyone has returned to the Drug Enforcement Headquarters that they realize that no one has it.

What do they do then? They rush back to Grass Restaurant and they search for it.

Ladies and gentlemen, it would be nice if we had the three and a half ounces of cocaine, but we do not. It would be nice if everything worked as smoothly as it does on Mission Impossible, but it does not. But we do know what happened to that three and a half ounces. We do know that it was in Grass Restaurant on that afternoon. What we do not know is exactly where it went after Detective Minichello saw it.

Now, perhaps, Miss McIntyre gave it to the brunette who was still waiting downstairs when she went downstairs just before she was arrested.

Perhaps Miss McIntyre heard the commotion at the top of the stairs when Mr. Weindling was getting arrested, went to the ladies' room, flushed it down the toilet, and then went to the phone.

Perhaps Miss McIntyre just threw it behind the telephone or around the corner, or on the floor, and a customer or a waiter picked it up before the officers came back and searched for it.

Ladies and gentlemen, we don't know what happened to it, but we do know this. Detective Minichello got two samples of cocaine, those two samples. He got one from Moses Weindling and one from both Moses Weindling and Patricia McIntyre.

We do know, secondly, Miss McIntyre assured Detective Minichello that she tried the package the night before and that it was strong.

Thirdly, we know Detective Minichello saw those three and a half ounces in Miss McIntyre's purse just moments before she was arrested.

Lastly, we have the defendants' own word after they were arrested. Officer Rinaldi told you what he overheard as he sat in the driver's seat of that car. In the car were Special Agent Panessa, Detective Daly, the two defendants, and Officer Rinaldi. We have the defendant, McIntyre calming down the defendant Weindling after the arrest by telling him not to worry about it, there is nothing in the pocketbook."

I really want to pause here and ask you to think about that testimony carefully because that is very damaging testimony, and it is particularly important because when she took the witness stand Miss McIntyre, in effect, admitted the substance of all that conversation. YOu have Miss McIntyre acknowledging the three and a half ounces that she carried right there in that conversation.

Look at the conversation from a couple of different angles, and ask yourself if it makes any sense at all except when you see it as an admission that she carried that three and a half ounces and that she got rid of it.

Think of it from the point of view of these being innocent people who have just been placed under arrest, in handcuffs, and they don't know what crime they may have committed. Think of it from that point of view.

Instead of demanding to know why he was put in handcuffs, the defendant Weindling is worrying, close to tears, about a pocketbook, Miss McIntyre's pocketbook. Consider this. Miss McIntyre is so calm, so composed, right at that moment that she is calming down Mr. Weindling. If she were innocent, wouldn't she be outraged or wouldn't she be scared having just been arrested and put in a police car? If she had not gotten rid of the three and a

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half ounces successfully, wouldn't she be nervous, just like Mr. Weindling was?

No. Her behavior only makes sense, what she said to Mr. Weindling only makes sense, if she knows two things: One, if she knows why she has been arrested; and, two, she knows she has gotten rid of the evidence, and it is not in her pocket.

At this point I would like to comment on some of the evidence that has come in in this case to make it clear that you understand what the Government feels is in issue here, because Miss McIntyre's character, her previous employment, who she knows, the fact she knows Mr. Weindling, that's not at all relevant to whether or not she committed the crimes with which she is charged in this indictment. That's not what the Government's evidence rests upon.

What the Government submits to you is that she is guilty of the crimes charged in this indictment because of what she did on April 27th and what she did on April 28th. You have evidence of her actions and in her words, as quoted to you by Detective Minichello, and her words as quoted to you by Officer Rinaldi. The Government only asks that you consider that evidence that she be found to have knowingly participated in these transfers of cocaine, in that sale and negotiation for the sale of cocaine, that she did it voluntarily. That is all that is at issue here.

At this point we have Moses Weindling admitting to another officer, again Officer Rinaldi, possession of that three and a half ounces.

At the same time he is trying to mislead the agents as to what has happened to the three and a half ounces.

Remember this: Officer Rinaldi is driving the two defendants from one station house to another, trying to find somebody to be able to personally search Miss McIntyre. He learns through a radio conversation with the Drug Enforcement Headquarters that they, in fact, do not have the three and a half ounces. So he goes to Moses Weindling and he says, "Look, you said you want to cooperate. Well, where is it?"

Moses Weindling says, "I left it on the table."

The Government submits that when he said that, Moses Weindling was saying two things: He was both admitting that he knew what Officer Rinaldi was asking him about, "Where is the three and a half ounces," and that he was also trying to mislead Officer Rinaldi.

Then we have a whole string of admissions that Moses Weindling made later that day to Agent Sandler.

Not only did he admit giving over the two samples and having the three and a half ounces in Grass, but also getting that cocaine from Jose, a Cuban on the West Side, and still owing him $2800.

So when it comes down to it, what I am asking you is to not let Mr. Joy or Mr. Anolik throw up any smoke screens when they talk to you and distract you from what is the evidence in this case. The Government is not asking you to find these defendants guilty because of any evidence we don't have. We are asking you to find them guilty because of evidence we do have.

All that evidence points to one thing. It points to the fact that the two defendants sitting here agreed with each other to try to sell Detective Minichello cocaine, and this agreement was a conspiracy in violation of the law, and that conspiracy and that crime is charged in count one of this indictment.

What is the defense to all of this evidence? Here is something that is a little bit difficult for me to talk to you about. The defendants want you to believe that Detective Minichello got on that stand and perjured himself right in front of you. They want you to believe that he jeopardized his career in the Police Department, a career in which he has been decorated almost too many times to remember in order to make a case against these two people whom he didn't even know. I submit to you that there can only be one reaction to such an argument and that is outrage. Without one shred of evidence -- and I ask you to look at the evidence in this case-- without one shred of evidence, they want you to believe that a detective working in a department where there has not been a promotion in the last three years, who has been cited by the Mayor for his valor, who risks his life --

MR. ANOLIK: I object to this whole thing, your Honor. It has nothing to do with his credibility.

THE COURT: Overruled.

MISS COTE: He has risked his life on countless occasions for the people of this City, a man whose family and child live in this City, a family and child who are proud of this man every day --

MR. ANOLI: I move for a mistrial. This has nothing to do with this case.

THE COURT: Overruled.

Let us proceed,

MISS COTES: They want you to believe that such a man is willing to throw all of that away by taking that witness stand and lying to you.

If you believe that, if you believe Detective

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Minichello was lying to you, then I say to you that the Government does not even want you to leave the jury box and go to deliberate: acquit these two people immediately, if you believe that.

But the Government submits, that after watching Detective Minichello on that stand you must reject any accusation that that man lied to you.

In addition, look at what you have to believe if you believe the story that Miss McIntyre has told you on that stand. Ask yourselves if any of this makes sense. She wants you to believe, number one, that all of a sudden on April 27th she is walking along with her bicycle and Moses Weindling happens at that precise moment to leave the back of Sixish Restaurant, wanders around on the street, runs into her, and brings her in. I submit to you, that what Detective Minichello happened, that's what happened, and that's the only thing that makes sense.

Moses Weindling wanted to call his lady; he went and called his lady. His lady came after she was called.

Why did he call her? He called her because he wanted her there to be with him as he negotiated the sale of three and a half ounces.

Secondly, Miss McIntyre wants you to believe that she gave out of the blue three separate digits to Mr. Weindling, the digit three, the digit five, and the digit seven; that she didn't hear anything about gambling or drugs or cocaine that whole afternoon. Well, it is in that same conversation, that she admitted to you, that she is telling Detective Minichello about Eastern Airlines and about flying to Pittsburgh, the same person who was participating so much she knows how many jinx everybody is having, what that is, and the same person who admitted to you on cross examination that she does in fact know what a 357 magnum is -- the rather morbid joke that Moses Weindling made that afternoon.

Third, does this make any sense? The defendants ask you to believe that four individuals, one of them Detective Minichello who didn't know either of the defendants before that day, met for two days in a row, a couple of hours, with very little explanation at all of why that was taking place.

I submit to you that those two meetings make sense when you view them from what Detective Minichello told you. Those four people were there on those two days to buy and sell cocaine.

Fourth, does this make sense? Does it make any sense that Detective Minichello, if he were going to fabricate a whole story about the sale of cocaine, would make up a story that first Moses Weindling was going to sell him three and a half ounces of cocaine,and then he called and was going to sell him four and a half ounces of cocaine, and then the next day he changed it back to three and a half? Why all these changes?

But there is evidence, ladies and gentlemen, in the record, to explain why those figures changed, and Detective Minichello explained it to you. Doesn't the fact that Moses Weindling had $900 in his pocket at the time he was arrested in fact corroborate that he had, indeed, sold one ounce of cocaine the night before to a second customer, just as he told Detective Minichello?

Fifth, ask if this makes sense? Patricia McIntyre would have you believe that on April 28th she carried Moses Weindling's money in her purse. Now she would have you believe that Moses Weindling didn't want his pocket to bulge in his jumpsuit. Well, he had an attache case. He could have kept his money there if he wanted to.

Why is it so important that she say to you that he kept his money in her purse? Well, because Detective DeRosa saw her hand that purse to Moses Weindling. When she came back from downstairs, back from meeting with the brunette; so her story doesn't make sense and doesn't even go far enough, because Detective DeRosa also told you that he saw Detective Minichello peering into and examining, handling, an object in his lap, and her explanation doesn't even cover why her purse moved from Weindling to Detective Minichello.

To believe that Detective Minichello is a liar, you also have to believe that he is a psyche. You have to believe that he set up these two defendants, told his whole group that he was going to be buying three and a half ounces of cocaine that day, had his whole group on surveillance that day, ready for the arrest, and that when he left the table and went to the car to give the signal for the arrest, that he knew that that woman would get up immediately and go downstairs, that she would not be arrested at the table, because if she had been arrested at the table along with Moses Weindling -- and Detective Minichello left them both sitting there together, -- that everyone would have known he was lying. What would have been his explanation for where the three and a half ounces were?

Finally, ask yourselves if this makes sense? What about all the statements that the defendants made after theirarrest? What is the first thing that Moses

Weindling says to Officer Rinaldi when he is put in the car? It is not, "What are you arresting me for?" It is, "I would like to cooperate. I did it in the Army. I had a bad experience, but I want to cooperate now."

What was the defendant Weindling doing when he said, "The pocketbook, the pocketbook," except worrying about those three and a half ounces.

What was the defendant McIntyre doing when she said, "There is nothing in the pocketbook; don't worry about it," except telling him, "I got rid of the three and a half ounces."

Why did the defendant Weindling say he left the three and a half ounces on the table unless he knew that the three and a half ounces were in the restaurant that afternoon?

Why did he admit to Agent Sandler that he had the three and a half ounces, and transferred the two samples and owed Jose $2800?

Indeed, why did he say any of that unless it was true?

I'm done now for this first time I have to address you. I will have a chance to address you again at the conclusion of the two defense summations. I have tried to review all the facts for you. I have tried to review all of the facts for you. I have tried to argue from the record to bring it all together. You know, you can't go outside the record. You have to argue from the evidence that is before you. I have tried to bring that before you, and I ask you to try to make the two defense attorneys do it, to argue from the record, to address themselves to the evidence that is in this case, the evidence that is before you.

This case is an important one. The defendants are entitled to a fair trial under the constitution, under the laws of this country. It is something that everyone in this courtroom has tried to give them. Everyone has tried to preserve that for them. I think it is fair to say that they have gotten a fair trial here.

The Government and the public are also entitled to a fair trial. Just as the worse thing that could happen would be for an innocent person to be found guilty -- and that should never happen -- a guilty person should not be acquitted.

The Government submits that it has proved on the record and in the evidence that these defendants are guilty of the crimes charged in this indictment. The government submits to you that these two defendants planned to share in the proceeds of their criminal enterprize, their sale of cocaine. Let them share in the guilt.

THE COURT: Ladies and gentlemen, we will be in recess until 10:00 o'clock in the morning. Notwithstanding that we are close to the end of the case -- we have two summations to go, and the Court's charge -- continue to keep an open mind and do not discuss the case with anyone.

I will see you at 10:00 o'clock in the morning.

(Jury excused.)

THE COURT: Do counsel need me for anything?

MR. JOY: No, your Honor.

MR. ANOLIK: No, your Honor.

THE COURT: I will see you tomorrow.

(A recess was taken at 4:20 p.m.)

(Adjourned to November 1, 1977, at 10:00 A.M.)

MISS COTE: If it please the Court, your Honor, Judge Owen, and ladies and gentlemen:

What I have feared would happen in the summations has, indeed happened. I submit to you that they have tried to divert your attention from what is the evidence in this case, from the testimony you heard from the witnesses and from the physical evidence you have before you. They want you to look everywhere except at that table and at those two people.

What I will do in rebuttal summation is try to address some of the arguments they made to you, and I will do that by focusing again on the evidence, because it is only on the evidence that you are going to be able to base your verdict.

The first thing I want to do is clear away some of the debris left by Miss McIntyre's past employment.

What is Miss McIntyre's employment history doing in this case? It is not here because I am overreaching. The reason that issue was even raised in this case is quite simple. It is because of what Miss McIntyre herself told you from that witness stand. You see the kind of argument that Mr. Joy is making and Mr. Anolik also made. They criticized the Government for putting evidence in this case which was only put in because of questions

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they posed to witnesses, because of issues they raised. Let me give you one example.

Remember Detective Minichello? You heard his direct examination when I initially put questions to him. There was nothing about citations, nothing about details of his work on the Police Force for fourteen years. And Mr. Anolik got up and cross examined Detective Minichello and basically called him a liar. Only after that happened did I get up and pose questions to Detective Minichello that culled forth from him an explanation of exactly who he is, to let him give his life to you because you have to look at that man, you have to know his background, and you have to know whether he is lying to you or not. It is that simple.

The same is true about Miss McIntyre and her employment history. You are not strangers here. You saw everything that happened in this courtroom. I don't have to go through it in detail again.

You remember what Mr. Joy brought out on his direct examination of Miss McIntyre? You heard she was from McKeesport, Pennsylvania; she finished high school in Florida; the next thing you know is that she is a stewardess working for Eastern Airlines in New York in the Fall of 1976. If that is supposed to be a narration of her life, a description of who she is --

MR. JOY: I object to that, your Honor.

THE COURT: Overruled.

MISS COTE: It is not accurate. I ask you to apply the test that Mr. Joy gave when he addressed himself to that issue. I ask you if she was candid with you.

You have a right to know what this woman has done for a living, who she is. Her background was important to her when she testified to you on direct examination. She brought out some of that background.

The Government submits, yes, her background is important, but it is important for you to get a picture of her complete background and not a partial picture. I say this very sincerely. It is not a lawyer's job to embarrass witnesses. I hope you don't think that I tried to do that at all during the course of this trial. It is a lawyer's job to try and bring out facts to let you see the evidence, so that you can evaluate a witness because what you are being asked to do is to decide, and Mr. Joy, I believe in his summation, put that question to you also. You are being asked to decide whether Miss McIntyre was being truthful when she told you that she didn't know what was going on those two days at the Sixish Restaurant and at the Grass Restaurant. That's one of the issues that you have to apply your common sense to.

If Miss McIntyre's backgr[illegible] is not relevant to this case in any way at all, the only way it is relevant is because it can be used by you to decide whether or not she knew what was going on on April 27th and April 28th, whether or not she committed crimes.

I submit from her testimony from that stand you know that at 22 years of age, this is a woman who has seen a bit of the world, a woman who is not nieve.

The question is; Did she or did she not know that was going on? Did she or did she not commit crimes?

There has been another smoke screen thrown up before you, and I hope you saw it for what it was, and that is the issue of whether Miss Thomas is black or white. Whether Miss Thomas is black or white has no relevance in this case at all.

So why was that raised? Indeed, why is Patricia Thomas in this case? You heard Detective DeRosa tell you in the course of preparing for this trial witnesses advised the Government that there was another woman who was in the restaurant, at Grass Restaurant. That was about the extent of the Government's knowledge a week and a half ago.

Then more witnesses were interviewed, and eventually we found Miss Jeronimo who testified that that other woman was a brunette, and she was talking to Miss McIntyre in Grass Restaurant in the bathroom.

Was this just any other brunette? Is this just a coincidence that the brunette in Grass Restaurant was a former room-mate of Miss McIntyre, someone who knows both the defendants, who was a stewardess for Eastern Airlines?

MR. JOY: I object, your Honor. There is no testimony that she was in the restaurant at all.

THE COURT: I think the record will support that argument.

MISS COTE: I believe, if you remember, Detective DeRosa was asked how sure was he that the brunette he saw in Grass Restaurant on the 28th was Patricia Thomas, and if you remember he said he was 95 percent sure.

So what is Patricia Thomas doing in this case? The Government didn't bring her to Grass Restaurant on the 28th; the defendants did that.

MR. ANOLIK: Objection. There is no evidence to support that at all.

THE COURT: Overruled.

MISS COTE: What happens to Patricia Thomas? That's a matter for another day. But on the facts of this case --

MR. ANOLIK: I object to that. That's completely improper.

MR. JOY: I join in that, your Honor.

THE COURT: Proceed.

MISS COTE: On the facts of this case and from the evidence given to you, and from your good common sense, you can figure out what happened at Grass Restaurant on the 28th and where Patricia Thomas fits in.

Now two defense attorneys have argued -- and correct me if I am wrong, but perhaps Mr. Joy argued this point, I'm not sure -- that Miss McIntyre did not have enough time when she went downstairs to get rid of the three and a half ounces of cocaine that were in her purse. Well, it is she, Miss McIntyre, and no one else, who said that after she got up from that table she left it and returned to borrow a dime from Moses Weindling. You didn't hear anyone else testify to that fact.

Secondly, two different witnesses -- asked for their testimony to be read back to you if you need to have your memories refreshed on this fact -- two different witnesses, both Investigator Hansen and Detective DeRosa, testified that Miss McIntyre was downstairs by herself for approximately a minute, out of their view for about a minute. That's a few steps from the ladies' room, that telephone. It is not a great distance. Ask for the record to be read back if you are confused about distance.

Remember this: Miss Thomas was down there too because Detective DeRosa told you he saw Miss Thomas go down, and he kept his eyes on that stairway and he didn't see her come up.

How long does it take, I ask you, to take a package out of your purse and hand it to somebody? Two seconds? Three seconds? Half a second?

No, it was no accident that Miss Thomas was in that restaurant. She was not asked by a friend to drop by while she was driving her bike along. She was there to help. We didn't bring her to that restaurant; the defendants did.

What is a response to all of this? They explain, because we only learned about it a week before trial -- well, isn't it better that we finally solved that portion of this crime even if it is on the eve of trial? It is because we did sols that portion --

MR. ANOLIK: I object to that. She is putting her own credibility in issue, and that's improper. She was not there.

THE COURT: Argue it perhaps differently, Miss

Cote.

MISS COTE: It is because we did solve that portion of the crime that the defendants have brought--

THE COURT: I take it the Government urges that it has solved that portion of the crime within the last week, right?

Proceed.

MISS COTE: They have brought the whole issue of whether Miss Thomas is black or white into this trial. They brought it up. We didn't bring it up. They brought it up when they cross examined Detective DeRosa.

As you will remember, Detective DeRosa described Miss Thomas as a woman, a white woman with a tan, and a brunette, and further details on that description. But the relevant part was: A white woman with a tan.

On cross examination he was asked whether Miss Thomas was black or white, and he said, "Well, she appeared white to me; she is a white woman with a tan." He gives you his response, and then Miss McIntyre takes the stand not knowing we have a picture of Miss Thomas and says, "Oh, Miss Thomas, she is a black girl."

What was the point of that testimony? Does that testimony help you to understand whether Detective DeRosa was mistaken or not about his identification? Does

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it help you to know that she is black? Isn't the evidence really that this picture fairly, accurately, describes who Patricia Thomas was? It is a model's picture. It is something somebody would have in their portfolio. It is not a picture that the Government took.

MR. ANOLIK: That's testimony now. Is she under oath?

THE COURT: Proceed.

MISS COTE: Look at that picture. Apply your common sense to that picture. They complain because we introduced a picture to clear up a false issue that they put into this case, an issue they raised. If they want to explain, let them explain to dooms day, but it is not helpful to you, the Government submits.

What about the Government not calling Miss Thomas? What about the Government not calling the informant?

First of all, do you think that if the informant's version of what happened at Grass and Sixish was different than Detective Minichello's, that one of those two defendants wouldn't have called him and put him on the stand?

I submit to you that if he had taken that stand, if the Government had called him, and he testified and his testimony had a corroborated Detective Minichello, their argument wouldn't be any different, except the fact that it is another lying Government witness. That's all it would be.

His Honor will charge you, as both defendants pointed out, that both the informant and Miss Thomas are equally available to both sides, the Government and the defendants.

What about Miss Thomas? Do you think she would have said she was not at Grass if she could have proved she was not at Grass on the 28th? That one of the defendants would not have called her?

Mr. Anolik argues it is crazy for us to produce her. After all, she might have been there. Well, yes, that's the point. The Government submits it was Miss Thomas who was the brunette there to help the defendants in the restaurant.

We have the burden of proof, and in my opening address to you I said it is a burden we accept. To meet that burden of proof we put witnesses on that stand. We put Detective Minichello on the stand and we put surveillance witnesses on the stand. We put a waitress on that stand. We gave you samples of cocaine, besides all kinds of other physical evidence, documents that you could look at.

His Honor will charge you that we could have called those witnesses; his Honor will charge you that they could have called those witnesses.

Don't you think that if Miss Thomas looked any different than this picture that they would have called her?

Mr. Anolik spent a great deal of time talking to you about Moses Weindling's drug habit. Well, there is no evidence in the record to support what he has tried to convince you of. As I told you before, his use gave both a motive and opportunity. He had to pay for those high priced drugs, and this was something: receiving financial aid from a college. He had to get it from somewhere. He had sources already.

The Government submits that the money he got from selling his cocaine not only bought cocaine for his own use, but supported an expensive lifestyle.

You have seen his fashionable denim blue jeans, and you have heard about his knee length boots. You heard about the jewelry he bought for his girlfriend and co-conspirator. You heard about his trips around the United States and to the Carribean, and you have heard about lunch at fashionable East Side watering holes for singles: Grass Restaurant.

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Don't forget the $900 found in his pocket when he was arrested. Don't let Mr. Anolik mislead you about that $900. It was in his pocket when he was arrested. It was in Mr. Weindling's pocket when he was arrested. So when Mr. Weindling asked about the pocketbook, he was not asking about his $900. The evidence is that the $900 was taken off him at the arrest and not out of the pocketbook.

By the way, is there any evidence in this case that any complaint was made by anyone about the agents stealing $900? This is a tremendous red herring; this is another way to smear the character --

MR. ANOLIK: I don't think the Government can argue on lack of evidence.

THE COURT: Overruled.

MR. ANOLIK: I ask for a misttial.

THE COURT: Overruled. Motion denied.

MISS COTE: That is another way to smear the character of the agents in this case without any evidence at all.

Yes, Mr. Weindling had a habit, but it was not a drug habit. It was a habit of spending money on himself, and that money was not legitimate. It was drug money. It was drug money he got from selling cocaine.

There is a question of why didn't Detective Minichello arrest the defendants right there at the table when he saw the three and a half ounces of cocaine in Miss McIntyre's pocketbook? I explained this before, and I will explain it again: The evidence is in the record. What was Detective Minichello doing? He was working undercover. You heard the testimony. The agents simulated his arrest, and the informant's arrest right at the same time that they arrested the two defendants.

Furthermore, he could not even give the signal from the table because he didn't see any surveillance agents to see the signal.

Ladies and gentlemen, they hope you find it hard to believe that two different agents thought that a blond haired woman had blue eyes, and at the same time. Because there is this coincidence they say that they must be lying, that they are telling the same story. In the next breath they say: But they are telling different stories and see, again, they are lying.

Hansen said he was not at any meeting and other agents say he was.

Detective Minichello, he agreed with Miss McIntyre, he agreed as to the position of the people at the table just as she had.

MR. ANOLIK: That's not on the record.

MR. JOY: She corrected it.

THE COURT: The jury's recollection will govern.

MISS COTE: You may ask for the transcript to be read back to you. I am using Mr. Bellow's notes, but --

MR. JOY: I object to that.

MR. ANOLIK: Is he supposed to be the court reporter?

THE COURT: She has told the jury and I will tell the jury that it is their recollection that governs. If they have any question about their recollection --

Counsel, I don't really think this is a matter for humor at the back table. I don't understand why you and Mr. Joy are smiling.

MR. ANOLIK: Because she said, "Mr. Bellow's notes."

THE COURT: Is that funny?

MR. ANOLIK: I thought it was very funny.

THE COURT: Let's go forward.

MISS COTE: I submit when you call for the record to be read back, you will find that Detective Minichello said that he was on the right-hand side of

Moses Weindling, just as Miss McIntyre testified. So here he contradicts the surveillance agents, and because of those things, they want you to believe that the witnesses are lying. They can't have it both ways.

Detective DeRosa -- and, again, call for the notes to be read if you have any doubt about it -- never said he saw the pocketbook as it was, below the table line. He never tried to make you believe that he could see through tablecloths.

What the Government submits to you is that what really happened in this case is that the agents were exceptionately accurate when it came to relating what they saw. In fact, this was borne out very dramatically in this very courtroom. You saw Detective DeRosa recognize a purse. He had not even seen that for six months. This was a purse that was hanging from that coat rack. This was a purse he testified looked very similar to the one he searched and that Miss McIntyre had carried that day at Grass. Detective DeRosa passed that test, didn't he?

Mr. Anolik says that Detective Minichello was lying. But he says also in the same breath something else that is very interesting. This is for the first time in this case: That Moses Weindling, in fact, did give those two samples of cocaine to Detective Minichello but gave them as part of a gambling transaction.

Why did he admit to those two transfers? The Government submits it is because the evidence is overwhelming in this case.

As his Honor will tell you, even if you accept his explanation for what happened -- and it is preposterous --

MR. ANOLIK: I object to that, your Honor. That's not my argument. My argument was thatit could have been. That was a hypothetical.

THE COURT: Proceed.

MISS COTE: And such a transfer would constitute a distribution within the meaning of the law. That is, if what Mr. --

MR. ANOLIK: I object to any instruction on the law.

THE COURT: She is commenting on an argument you made to the jury.

MR. ANOLIK: A hypothetical argument.

THE COURT: You may characterize it as such. Proceed.

MISS COTE: Even if what Mr. Anolik said is true, then Moses Weindling is guilty of violating the law as charged in counts two and three of this indictment.

Why would Detective Minichello do what he did if it is true that those two transactions were part of a whole gambling thing? Why make up the three and a half ounce transaction? Under their reasoning he would have his case at that point; he would have his promotion all tied up. Why would he testify about three and a half ounces that he didn't have? Because the Government submits to you he was telling the truth. That is what happened.

They continue the attacks on Detective Minichello because of the overwhelming evidence in this case they resort to outrageous arguments on his character. Finally, they dig down to the bottom of the barrel and ask you to believe that that man took the stand, raised his hand, and lied to you without any evidence of motive.

Do you remember Mr. Anolik's pathetic attempt to try to get out evidence of a motive when he was cross examining Detective Minichello? Did you see his jaw drop when he asked him whether or not he had gotten any promotions and Detective Minichello told him that there had not been any regular promotions for three years?

So you see what the argument is in this case. They are trying to put the agents, the detectives, and the officers on trial.

They complained about them drinking while sitting in bars working on their cases, working to catch cocaine dealers. They have ridiculed their investigation because they didn't seize the three and a half ounces. They tried to suggest there is something wrong with investigating cases and gathering evidence against a cocaine dealer, a cocaine dealer who gave them a sample in the very first meeting.

They have done all of this to try to shift your attention from those two people who are on trial, and those are the only people who are here on trial, not the agents.

With all of these complaints they made about the agents, really reveals confusion.

Do you remember Mr. Anolik asking Agent Sandler whether or not Agent Sandler had searched the other agents to see if they had contraband on them?

MR. ANOLIK: That was Mr. Joy.

MISS COTE: My memory may be incorrect. Your memory controls, but that really is an amazing question.

Does it make any sense at all to put these agents on the stand in the light of what you have heard? Particularly, I would like you to compare the testimony they gave to you and the testimony Miss McIntyre gave to you. Each of those witnesses, all of those witnesses, were subject to cross examination, and it is cross examination which in our system is supposed to bring out for you, the jury, whether or not the witnesses are telling the truth. Compare what you heard from those witnesses on cross examination and what you heard from Miss McIntyre.

Something very interesting happened when Mr. Joy began to discuss Miss McIntyre in his summation to you. He said that there was no evidence that she knew of what was happening, even if Moses Weindling was, indeed, selling the cocaine. That's an interesting admission right on his summation, isn't it? He had to admit that after he heard the overwhelming evidence from the Government's witnesses the crime that she is charged with comes down to this question: Whether or not she knew what was happening and whether or not she participated.

You have heard the evidence. I will not review it in detail. She told Detective Minichello in trying to sell him, trying to encourage him to do the deal, that she used cocaine the night before, and it was dynamite.

Miss McIntyre said in the car, "I have gotten rid of it and there is no more."

You saw her demeanor on the stand. Was she truthful when she testified before you? Mr. Joy says she was candid. Is that true? Was she candid about the number 357 which, at first, she says were three random numbers, and under cross examination she said, "Yes, they do mean something to me. Yes, I do know what a 357 magnum is." I believe she said, "I have a brother who is a cop.

Was she candid when she said to you, "I paid Mr. Weindling's fare for those trips"?

Then, finally, she admitted that it was the airlines who paid for one of those trips.

Was she candid when she said that? Was it one trip when a certificate that you have, which is in evidence, says that she left Mr Weindling use someone else's name, a member of her family, supposedly, with passes -- plural, not singular?

They want you to believe that the airlines assumed that this person was her husband-- just assumed. At the same time she is telling you that the airlines are extremely worried about this problem of everyone using family [illegible] whenever they are not family members.

Then she tells you as part of putting in Mr. Weindling's defense for him that yes, he was a photographer, he had a studio, and he had a partner. Under cross examination she says, "No, he didn't have any studio, and, no, it all fell through. It didn't really exist.

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Generally consider her demeanor. Did she stand the test of cross examination as Mr. Joy contends?

What about the lack of evidence in this case? They have asked for the tapes; they have asked for photographs; they have asked for fingerprints; they have asked for an informant. One of the questions that they asked of a witness, they asked for parabolic microphones. It is no more than another smoke screen, I submit to you. This is something to distract you from what you have to do.

The Government is not asking you to find these people guilty on anything other than what we have introduced in evidence in this case.

If we had introduced just the testimony of the informant, they would have asked, "Why wasn't an undercover used?"

If we only had the testimony of an undercover agent, they would want to know, "Where is your testimony?"

If we only had testimony from surveillance officers, they would want to know, "Where is the photographic surveillance?"

This is really a good point. Pictures. Pictures in the middle of the afternoon! Detective DeRosa is there on surveillance, but they want him to interrupt this

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conversation with Mr. Weindling who is negotiating the sale of cocaine with Miss McIntyre, interrupt that, walk up to the table, and say, "Pose. This is picture time. I am here to take your picture." It doesn't make sense.

If we had done that, they would ask, "Where are the motion pictures, and why aren't they in living color?"

The defendants want you to forget what we do have, because what we have is overwhelming. We have the testimony of Detective Minichello; we have the testimony of the surveillance officers; we have the defendants' admissions after they were arrested; we have the physical evidence receipt here on this table, and you could ask to see it.

They want you to focus on the three and a half ounces that we don't have, and to forget the two samples.

They want you to focus on Detective Minichello hoping that you will believe that he is a liar and forget about the surveillance. Forget about the post-arrest admissions. Each of them argues that I have been over zealous.

MR. ANOLIK: Objection. I never said that.

THE COURT: Proceed.

MISS COTE: They indicated from the record by pointing to all the evidence in the case, right, how that was so.

The Government submits they didn't prove that to you. They didn't refer to the record. In fact, the Government submits you do know how this case was prepared because you heard Miss Jeronimo tell you. She was not told who was on trial. She was not told their names. She was not told what crimes they were accused of. She was not told where her testimony fit in. She was told to come here and tell you her story, to simply tell the truth, and that goes for all the witnesses the Government has put on the stand.

I have come to the end, and I wanted to just address one more argument to you, and that is, "What have the defendants really said about the critical evidence in this case against both of them? Have they made any persuasive argument to you about those comments, both of them made in the car after they were arrested? Really, can there be any other meaning than that Moses Weindling was worried about the three and a half ounces, and Miss McIntyre knew she had gotten rid of that?

Do you remember that scene? Officer Rinaldi is in the car. Moses Weindling is put in. Officer Rinaldi tells him, "Don't talk to me now even if you want to

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cooperate. Don't talk to me now. Wait until you get down to the office.

Then Miss McIntyre is put in. Both of them are given their rights. Officer Rinaldi had already told Moses Weindling why he was arrested, that it was for narcotic charges.

After they had been given their rights, Moses Weindling said, "the pocketbook, the pocketbook, where is the pocketbook?" He is not talking about $900. He has that in his pocket.

What is Miss McIntyre do? She whispers right back in his ear, "Don't worry. Don't worry. There is nothing in the pocketbook."

Is there any other interpretation other than the fact that Moses Weindling was talking about three and a half ounces in Miss McIntyre's purse?

There is simply no doubt about it at all, I submit.

In conclusion, Mr. Anolik has mentioned to you that this case is a milestone in the lives of these two people. I'm not denying that. I'm not denying the seriousness of the charges against them.

But don't be misled by those comments of his because whether these two people, if you should find them guilty, get probation or a suspended sentence --

MR. ANOLIK: Your Honor, I object to that. They face fifteen years here.

THE COURT: I will charge the jury that sentence is a matter not of their province; it is a matter of the Court's province should there be any finding.

Go ahead without further reference to that subject.

MISS COTE: Ladies and gentlemen, I am finished.

The Government submits that both of these defendants engaged in a conspiracy to distribute cocaine and that they, in fact, did distribute cocaine.

The Government submits that when you have examined that evidence, all the evidence in this case, and when you have applied your common sense to that evidence, you will return a verdict finding each of these defendants guilty of all the crimes charged in this indictment.

Patricia McIntyre went downstairs and when she came back she handed her purse to Moses Weindling. He took that purse and he opened it and he handed that open purse to Detective Minichiello. Detective Minichiello looked inside and saw and felt three and a half ounces of cocaine.

At that point Detective Minichiello went outside the restaurant to his car to get the money to pay for that cocaine and he gave the signal for the arrest of the two defendants.

When the agents went in to Grass to arrest the defendants they found Moses Weindling sitting at the table, but Patricia McIntyre was not there. They found her downstairs, and when they searched each defendant they did not find the three and a half ounces of cocaine.

You will hear evidence in this case that Patricia McIntyre got rid of that cocaine and therefore the Government was unable to seize it and present it to you here as evidence, but you will hear from the defendants' own lips that the second sample --

MR. ANOLIK: Objection. I would like to be heard at the side bar.

THE COURT: Why don't we avoid this and go on with the opening.

MS. COTE: Detective Minichiello will repeat words said by the very defendants --

MR. ANOLIK: I have to move for a mistrial at this point.

THE COURT: Denied.

MS. COTE: That the second sample of cocaine came from the very package that the three and a half ounces came from, and you will hear Detective Minichiello describe the three and a half ounces that he saw.

In addition, you will see what this case is all about because you will see the two samples of cocaine.

I know that Judge Owen has told you to keep an open mind, to listen carefully to all the evidence. That is something that each defendant and the Government wants you to do.

In addition, apply your common sense to what you will hear and when you do the Government submits that you will find both defendants guilty beyond a reasonable doubt and you will convict each of them of all the crimes with which they are charged in this indictment.

(11:55 A.M.)

MR. ANOLIK: Good morning, ladies and gentlemen, your Honor:

My name is Anolik. I represent the defendant Weindling. Stand up, please.

AFFIDAVIT OF SERVICE BY MAIL

STATE OF NEW YORK)
)ss.:
COUNTY OF KINGS)

Marie Ratner, being duly sworn, deposes and says; that deponent is not a party to the action, is over 18 years of age and resides at Brooklyn, New York. That on the 22nd day of March, 1978 deponent served the within appendix to brief on behalf of appellant upon Hyman Bravin, Esq. 6 East 45th St., New York, N.Y., attorney for appellant McIntyre, the address designated by said attorney for that purpose by depositing a true copy of same enclosed in a post paid properly addressed wrapper, in a a post office official depository under the exclusive care and custody of the United States Postal Service within the State of New York.

Sworn to before me this
22nd day of March, 1978

John R. Serpico

JOHN R. SERPICO
Notary Public, State of New York
No. 24-3598170 - Qualified in Kings Co.
Commission Expires March 30, 1979

AFFIDAVIT OF SERVICE BY MAIL

STATE OF NEW YORK)
)ss.:
COUNTY OF KINGS)

Marie Ratner, being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides at Brooklyn, New York. That on the 21st day of March, 1978 deponent served the within appendix to brief on behalf of appellant (2) copies thereof upon Hon. Robert B. Fiske, Jr., U.S. Attorney, Southern District of New York in this location at 1 St. Andrews Plaza, New York, New York the address designated by said attorney for that purpose by depositing 2 true copies of same enclosed in a post paid properly addressed wrapper, in a post paid properly addressed wrapper, in a post office official depository under the exclusive care and custody of the United States Postal Service within the State of New York.

Sworn to before me this
22nd day of March, 1978

JOHN R. SER[illegible]CO
Notary Public, State of New York
No. 24-3598170 - Qualified in Kings Co.
Commission Expires March 30, 19 79

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77-1497

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

Appellee,

- against -

MOSES WEINDLING and
PATRICIA JOANNE McINTYRE,

Defendants-Appellants.

B

P/S

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

TRIAL TRANSCRIPT
(with deletions)
(Volume -1- Pages 1-403;
except no copies of: pp. 379-403)

HYMAN BRAVIN
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Patricia Joanne McIntyre
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UNITED STATES COURT OF APPEALS
FILED
MAR 27 1978
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

PGB

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----------------------------------x

UNITED STATES OF AMERICA

v.

MOSES WEINDLING and
PATRICIA JOANNE McINTYRE,

Defendants.

-----------------------------------x

77 Cr. 472

New York, New York.
October 25, 1977 - 9:55 A.M.

Before:

HONORABLE RICHARD OWEN, District Judge

and a jury.

APPEARANCES:

ROBERT B. FISKE, JR., United States Attorney
for the Southern District of New York.
MS. DENIS L. COTE and
DANIEL J. BELLER, Assistant United States Attorneys.

IRVIN ANOLIK, ESQ.,
Attorney for defendant Weindling.

LEONARD JOY, ESQ.,
Attorney for defendant McIntyre.

(In the robing room.)

THE COURT: A couple of things.

Do you have any special voir dire questions?

MR. ANOLIK: Nothing specifically, Judge. There are one or two things I would like to take up at the appropriate time.

THE COURT: How long is it going to take?

MR. ANOLIK: How long is the Government's case going to take?

MS. COTE: Approximately two days, your Honor.

THE COURT: Do you know what your case is going to be at this time?

MR. ANOLIK: Not 100 per cent until we hear the Government's case. But our case should take no more than a day.

MR. JOY: And mine a half a day.

MR. ANOLIK: I'm not sure it will take a whole day.

THE COURT: We will get rid of the jury by possibly Friday.

MR. ANOLIK: I have an appellate argument this afternoon.

Incidentally the Judge indicated he would try to call me the first case, which would get me out 3:15.

I could be back here at a quarter to four or four o'clock.

THE COURT: That's a little bit late.

MS. COTE: Yes.

We would prefer to begin again tomorrow morning fresh.

MR. ANOLIK: I did make the effort.

THE COURT: The Government has a memo here in which they are asking me to make a ruling having to do with defense not going into a hearsay statement of male defendant exculpating female defendant at some point.

Any problems with that?

MR. JOY: I have a problem with that. If they are going to use any statements of the defendant, they ought to use them all, at least certainly the part that exculpates my client. I don't think they ought to be able to pick and choose because I think it would be part of the entire context of what is admission or, I assume they are using parts of it as an admission, and I think under the rules for completeness the entire admission ought to be used or none of it at all.

THE COURT: Let me ask you this: Is that the only real ground you have to disagree with the Government?

MR. JOY: I saw these five minutes ago when I received the Government's 3500 material. That's what occurred to me immediately.

THE COURT: Let me know some authority by tomorrow morning on this, and in the meantime we will act as if nobody is going to ask about it. If you feel you are entitled to ask, brief me further in the morning. It does seem to me that the Government is more likely right than not here. The admission against interest is admissible because it is contrary to penal interest. The other is a sheer hearsay statement offered for the truth of its contents without being subject to cross-examination.

MR. ANOLIK: Judge, if we are passing that, I would like to go into one other aspect of the alleged statement.

I notice the Government mentions the fact somewhere along the line that my client said he had some difficulty when he cooperated in the Army, and I would not want any reference made to his being in the Army or his service in the Army. He did have a problem when he was in the Army. I think it involved a court-martial on one of the charges there where he was acquitted.

Is that correct?

MS. COTE: I do not have the full record of all of the Army proceedings against him yet so I don't know the outcome of all of the offenses that he committed while in the Army. However, the Government does intend to introduce through its first witness conspiratorial statements made by the defendant Weindling in reference to his Army experience. However, the Government is willing to restrict those statements so that there is no reference to serving any time in jail while in the Army or in fact for having even been arrested while in the Army.

If I can put on the record, your Honor, the substance of the statement, it would come in through our first witness, and that is that during the course of the conspiracy, during negotiations for the sale of the large quantity of cocaine, defendant Weindling presented himself as someone who had experience as a very sharp seller who had outfoxed law enforcement officials before, and his example was how Army officials had been interested in trying to find out exactly how he had been selling narcotics while he was in the Army.

MR. ANOLIK: You see the problem is this: I have to make a decision as to whether to put him on the stand. He's a young man. If they are going to bring out his problem in the Army, even he is not 100 per cent sure of what happened. He knows there was an appeal and apparently a reversal of one conviction, and he's a little

MS. COTE: At this point the Government does not intend to use it as a similar act merely to repeat the statement made in furtherance of the conspiracy by the defendant.

THE COURT: That answers one problem you have.

MR. ANOLIK: I would hope that they would not mention anything of the Army. That's the only point. I don't see why they have to mention the Army at all.

THE COURT: It does seem to me if he is negotiating for the purchase of cocaine by touting himself, touting statements, whatever his touting statements, whatever they may include, they are admissible.

MR. ANOLIK: I had thought it was coming in in a different way.

THE COURT: You said you had some threshold things. Was that basically it?

MR. ANOLIK: That was it.

MR. JOY: I have several voir dire questions which, maybe with luck, my man has in the courtroom now. May I take a quick glance?

(Pause.)

MR. JOY: Both the defendant and my voir dire questions are now coming from across the street. That's Number 2 Lafayette Street, your Honor. It should take only two minutes.

(Pause.)

MR. JOY: The defendant is in the courtroom, your Honor.

(Pause.)

MR. ANOLIK: On these proposed voir dire questions on behalf of P[illegible]icia McIntyre, since they relate to one defendant, I prefer you use "they" rather than "she", if I may, your Honor.

THE COURT: I read these in. I read these in to the extent I use them.

MR. ANOLIK: Thank you.

THE COURT: Let me ask you about your Number 10: Do you really want me to ask that?

MR. JOY: Yes, in general, saying that if any juror feels that a defendant has to take the stand in order for them to acquit, I would like to know about it.

MR. ANOLIK: And that is a very touchy type of question because there are cases as to whether they do or do not take the stand.

MR. JOY: But if there is somebody that feels the defendant has to, I would like to know about it.

MR. ANOLIK: I have no objection one way or the other, your Honor.

THE COURT: Going back to 1, the second paragraph under 1,"did the Judge make any comment regarding your verdict?" What does that mean?

MR. JOY: I have never heard it in the Federal Court, but a Judge when he is particularly annoyed at an acquittal will say, "This defendant is the worst defendant I have ever seen and for you people to let him out is why there is crime on the streets."

I have had a number of jurors say that was very shocking to them. That does not usually happen -- I have never heard a Federal Court do that.

MR. ANOLIK: I have.

MR. JOY: I have heard a number of State Court Judges do that.

THE COURT: Ms.Cote, do you have any feelings about this Number 10?

MS. COTE: Your Honor, the Government does not object to the substance of Number 10. While we understand that the Government would not be able to comment on the defendants' failure to take the stand, each defense counsel, if he wishes an instruction, the substance of Number 10, the Government has no objection.

The Government does have specific questions about a few other of the voir dire questions submitted by

Mr. Joy, however.

THE COURT: I will ask whether any Judge made a comment and see whether anything comes of it.

All the others up through 5 I ask as a regular matter anyway. I will ask 5 in substance as to whether there is anything in the nature of his charge that predisposes them against impartiality, so to speak.

MS. COTE: The Government has only an objection to one section in those first five questions and that is the last paragraph in Question Number 1. It's the top of page 2.

"Have you ever served as a grand juror? If so, did you ever indict someone whose guilt you felt was doubtful?"

THE COURT: I won't ask that.

MS. COTE: Thank you, your Honor.

THE COURT: I will give most of these in substance. But back to Number 10, I suppose I have no problem with it. You don't have any problem with me. I'll give it exactly the way you ask for it.

I must confess if I were a defense counsel I would not ask the Judge to give Number 10.

MR. JOY: One of the problems with voir dire in general is that it is always someone else doing it other than yourself, but I think that the important thing, I would like to find out if a prospective juror feels in order for them to acquit they want to hear both sides, they want to hear the defendant tell her side of the story, and regardless of what your Honor says it is not going to make any difference. If somebody feels that way I would like to know about it.

MR. ANOLIK: The Judge is going to charge that the prosecution has the exclusive burden and there is no burden upon the defendant to prove his innocence.

MR. JOY: That's true, but that goes over the heads, unfortunately, of a number.

THE COURT: I give a fairly comprehensive statement as to a defendant not taking the stand.

MR. JOY: You do that before?

THE COURT: As part of my charge at the end.

MR. JOY: I think everybody does that.

THE COURT: I give one even broader, defendant-oriented, in my judgment, than the standard charge.

MR. JOY: If your Honor has a problem with the --

THE COURT: I don't. I'm concerned that it triggers off thoughts in a juror's mind that yes, it might disadvantage you.

MR. ANOLIK: I'm not happy with it, but I don't want to constrict my associate's feelings. I don't feel that strongly where I will object to it. I have never asked for it specifically. If you find it is helpful --

MR. JOY: It depends on how it is given.

THE COURT: I will give it exactly the way you have given it. I will not turn it around in any way so you might say I didn't do it the way you asked for it and therefore there is a problem with it.

MR. JOY: If you could do that, that would be agreeable.

THE COURT: I will give it exactly the way you have given it, and I will give it as your request to Mr. Anolik --

MR. JOY: Then I have a problem with that.

THE COURT: You have the word "she" in there.

MR. JOY: As I understood it, your Honor is going to do all the rest as "they". If you suddenly now drop back to "she" --

THE COURT: I can't bind Mr. Anolik on this.

MR. JOY: I prefer then you don't give it at all because it may very well be that she will testify. I don't want to have her singled out.

MR. BELLER: May I make a suggestion? Perhaps if the Judge asked the jury, gave a brief thing about burden of proof on the Government proving charges beyond a reasonable doubt the defendant need not testify, and stress the importance of that in our system of justice and asks, is there any juror who could not accept that principle? Wouldn't that basically solve your problem?

MR. ANOLIK: I would prefer that.

MR. JOY: Yes.

THE COURT: The defendant need not testify?

MR. ANOLIK: That's right.

MS. COTE: Your Honor, the Government strongly objects to the wording of Number 11, specifically --

THE COURT: I will not give it that way. I will tell them that they are to judge the testimony of law enforcement officials exactly as they do everybody else and they are to treat law enforcement officials no differently than anybody else. That is as far as I care to go.

(In open court.)

(Prospective jury panel sworn.)

(Adjourned to October 26, 1977, at 10:00 A.M.)

United States of America

vs. 77 Cr. 472

Moses Weindling and
Patricia McIntyre

New York, New York.
October 26, 1977 - 11:15 A.

(In open court.)

(On 10/26/77, at 11:15 a.m., a jury,and two alternate jurors,were duly impaneled and sworn.)

(In open court; jury present.)

THE COURT: Ladies and gentlemen, for those of you who have never served before, let me make some observations.

We are going to take a recess. When I finish those observations, we will take a recess for ten minutes. Following that recess we will begin the case proper.

The case will proceed in roughly the following order: The Government shall make an opening statement which will be an outline to you of the case.

Each defendant may make an opening statement outlining his or her case, although neither is required to do so.

I want to say to you that the opening statements are not evidence but merely to aid you in generally understanding what the party expects to prove to show as it comes in. It is treated as a road map of where the party expects the case to go.

After the opening statements are made the Government will offer its evidence which will consist of witnesses from the stand and such documents and other things as it feels are appropriate.

At the conclusion of the Government's evidence each defendant has the right to introduce evidence. However, neither need do so.

Rebuttal evidence if appropriate may be introduced.

At the conclusion of all the evidence the attorneys may make their closing arguments to you.

Following the closing arguments you will be given instructions on the law by me and you will then retire and deliberate to arrive at a verdict.

The law which will apply to the case will be contained in those instructions that I give you at the end and may be contained in the course of instructions that I may give you during the course of trial if something becomes appropriate to instruct you on at the time.

It is your duty, ladies and gentlemen, as I said earlier, to determine the facts in this case, determine them from the evidence that you will hear and from the reasonable inferences that arise from such evidence or from the lack of evidence, as the case may be. In doing so I want to caution you you are not to indulge in guesswork or speculation or surmise or conjecture.

I gather this case is going to go probably into Monday of next week, maybe Tuesday, but in any event into early next week. We will normally sit from 10:00 in the morning until just a little before 1:00, and from 2:00 to 4:30. Sometimes we sit a little later if there is a witness on the stand and I feel that we could finish with that witness by staying a few minutes later.

We take recesses in the middle of each of the sessions.

Please be prompt in reporting because there fourteen of you and we cannot begin until you are all here.

Sometimes at the beginning of a session the lawyers have things to bring to my attention before we can begin and I sometimes have to hold you a few minutes. But to the extent possible, I like to begin when we have appointed the hour.

Throughout this entire case, ladies and gentlemen, please keep an open mind. Do not conclude from hearing one witness or one side of the case that you know all about it. Don't conclude from hearing, as I say, one witness, that you know all about the case because a later witness may add to or subtract from what you learn from the first witness.

Don't conclude from the direct examination that you know all about what a witness has to say because cross-examination of that witness may add to or subtract from what you had learned on direct examination.

Please do not discuss the case amongst each other or with anybody else until it's all over. One very good reason I see for that is that if you start discussing the case you will be giving tentative opinions on things. If later on you conclude that your tentative opinion was erroneous and you think differently about it, you don't have to defend it to anybody that you may have said it to before. You keep your own counsel and go on. You don't have to say, "Well, I thought this and now I think this and somebody else is going to think I'm changing my mind about it".

If you have not verbalized it you have nothing to explain away. You go forward with your thoughts.

I would suggest that you treat the proof in the case as if it were leaves falling in the back yard in autumn. Wait until the whole pile is there and then pick up the whole pile and assess the whole pile.

During the course of this trial, the attorneys will doubtless object to evidence. You will hear those objections being made. That is an attorney's right and indeed attorneys do it, if he or she feels so minded. No inference is to be drawn against any attorney by reason of the fact that he or she may object against evidence. Nor are you to draw any inferences from how I may rule on it. That is my job, to see to it that as far as I can the evidence that you have to consider is properly for you to consider and I therefore have to sometimes screen evidence that is proposed to determine whether or not it is properly before you.

So don't draw any inferences from the fact that attorneys object or from how I may rule.

Those are not your province. Your province is to decide the facts on what is before you. It is my province to see that what comes before you is properly before you.

As I say, openings and summations are not evidence. They are attorneys' arguments. The attorneys were not there. It is the witnesses you will hear on the stand.

Nor is it evidence if there was a question to which there was no answer. It is the answers to questions that are evidence, not some fact that may be put into a question where there is then no answer to it.

You are to decide this case upon the evidence which means the answers to questions and documents, other exhibits properly admitted or the lack of evidence.

One final thought, and that is throughout this trial, throughout consideration of the evidence as it comes in, and throughout your deliberations in the jury room, I will say to you just because you have become jurors does not mean that you leave your common sense in the hallway. Keep it with you. Apply it at every stage of the trial.

We will take a recess now for ten minutes.

(Recess.)

THE COURT: Mr. Joy, I have read these cases and I am of the view you may not ask Government agents on cross-examination as to this exculpatory statement. The reason, as I see it, is certainly at this point there is no showing that the declarant, that is Mr. Weindling, is unavailable.

MR. JOY: I believe it is covered by the

first section of the rule which says where there is a privilege and that is or would be exercised, that would mean that he is unavailable --

THE COURT: You don't know that yet. If Mr. Weindling would take the stand in this case, which none of us know or at least I won't presume to say he will or will not, it is not determined until he has rested his case whether he is available or unavailable. That means that I do not have to reach the question as to whether this is a statement against interest, but I do think it appropriate to observe that I am fairly of the mind that this is not a statement against interest, as we discussed in the robing room not on the transcript; it seems to me entirely arguable here that if a person is arrested under circumstances where he feels that the authorities had the goods on him and by taking the rap to himself he can exculpate somebody else even though he knows that person is guilty, it is entirely psychologically consistent to say, "All right, you have got me, but she's innocent." And for the former to be true because it's a statement against interest and for the latter to be completely false because he wants to exonerate his friend. Therefore, I do not see that that statement is one against interest. Indeed, it might be in his interest rather than against his interest to do everything he can for a friend.

Even if you reach that, I have real troubles with that, but as I say it does not seem that we have gotten to the point of Mr. Weindling being unavailable, that we even reach that level.

MR. JOY : Does that mean that in the event he decides not to testify we would take the point up again as to whether --

THE COURT: Whether you would be permitted --

MR. JOY: It's conceivable the defendant Patricia McIntyre may testify, in which case I would argue that that was part of corroboration, assuming she states she is innocent with respect to the admission of the statement under 804, 803.

Just addressing your Honor's point about the self-serving portion of the statement, I think as we look at the legislative history of that section, what the framers had in mind was a statement that is mixed, which is very often the case, and I think the case I cited from the First Circuit, what that was dealing with, was the situation where there is inculpatory and exculpatory matter, and I think it is saying in effect that you can't separate it. I think it is particularly acute in this case because it is not the defense which is offering the statement or part of the statement, it's the prosecution. I think it's difficult for the prosecution to argue the part that says he is guilty, that is worthy to be heard by the jury,but not the part that says "I am guilty but Ms. McIntyre is not."

I think that my offering of the statement that Ms. McIntyre is innocent -- then I think your Honor would have a point -- but where the Government offers the statement, it seems to me in fairness that the entire statement for whatever weight the jury wishes to give it -- and I think the arguments that your Honor has made that he may want to arguably say that his girl friend knows the jig is up as far as he is concerned -- it would certainly be an argument that the Government would make in summation. But I think the fact that he made that statement is certainly worthy of the jury's hearing it.

For those reasons I would urge your Honor when the occasion arises to reconsider your ruling.

THE COURT: I will hear you then.

In all fairness to you, I want you to be aware that my thinking is that they are severable parts, and one is against interest and one is in collective interest. I have my doubt that I would permit it even if Mr. Weindling were unavailable. We have not reached that.

Let's get the jury.

MS. COTE: May I put something on the record before we bring in the jury?

During this break I notified each defense attorney that the Government now believes it knows the identity of one of the co-conspirators of the two defendants and her name is Patricia Thomas. At this point I hand each defense attorney a copy of a letter to that effect and I hand up to your Honor a copy of that letter.

MR. ANOLIK: May I ask your Honor about when the Government first learned this?

MS. COTE: It is included in the letter. The Government first learned the identity of the co-conspirator this Monday.

(Jury present: 11:45 A.M.)

MS. COTE: Ladies and gentlemen of the jury:

This is a narcotics case. The evidence will prove that the two people sitting there, the man in the brown suit coat and the woman in the white dress, Moses Weindling and Patricia McIntyre, are cocaine dealers.

Now they are not street level dealers selling five and ten dollar quantities of cocaine. Rather the evidence will show that in April of this year these two people negotiated the sale of between three and a half to four and a half ounces of cocaine; that is approximately one-eighth of a kilogram of cocaine.

The evidence will concern primarily three different transactions.

In the first transaction Moses Weindling alone gave a sample of the cocaine he had to sell to a potential customer. This took place on the 27th of April at a place called The Sixish Restaurant.

The following day on the 28th, both defendants, Moses Weindling and Patricia McIntyre, gave a second sample to that same customer. This took place at a restaurant called "Grass", also located on the east side of Manhattan.

Now each of these samples was part of the negotiations for the sale of a far larger quantity.

When they gave the first sample that is the crime that is charged in Count 2 of the indictment.

The second sample is the crime charged in Count 3 of the indictment.

Possession of that far larger quantity is the crime charged in Count 4 of the indictment, for on April 28th these two defendants had in their possession three and a half ounces of cocaine which they intended to sell for $3400.

Now the evidence underlying these three separate transactions constitutes the Government's proof that these two people agreed, that they cooperated, that they conspired together, to sell cocaine, and that is the crime charged in the first count.

The purpose of an opening is to let the jury know what they can expect to hear as the Government presents its evidence.

As Judge Owen has told you, the Government has the burden of proving the defendant's guilt beyond a reasonable doubt. It's a burden that we accept and that as you will see in the course of this trial it's a burden that we will meet.

How is the Government going to prove that these two defendants conspired together to sell cocaine? That they in fact turned over two samples of cocaine and held three and a half ounces ready for sale? By people who were there.

For what these two defendants did not know was that the person with whom they were negotiating was a detective on the New York City Police Force. He was assigned to a Drug Enforcement Agency made up of City, State and Federal officers and agents. His name is Anthony Minichiello, and you will hear his testimony.

In addition, you will hear the testimony of other officers and agents from that same Drug Enforcement group who watched these events, watched those three transactions, and who arrested both of these defendants.

In brief, you will hear how Detective Minichiello was introduced to Moses Weindling by an informant, and how Moses Weindling handed Detective Minichiello a sample of cocaine, a sample of the cocaine he had to sell, and you will see that sample.

On that same afternoon, April 27th, Moses Weindling brought Patricia McIntyre to join the group and with her sitting there he negotiated the sale of the three and a half ounces of cocaine to take place the following day.

The next day Detective Minichiello and the informant met again with both defendants. This took place at Grass Restaurant, and on that occasion, with all four people present, they handed Detective Minichiello a second sample of cocaine. You will see that sample.

When Detective Minichiello asked to see the whole package he was going to buy, he was told that neither defendant had it on him or her, but that it would be in the restaurant.

They had lunch. When they finished lunch

Patricia McIntyre went downstairs and when she came back she handed her purse to Moses Weindling. He took that purse and he opened it and he handed that open purse to Detective Minichiello. Detective Minichiello looked inside and saw and felt three and a half ounces of cocaine.

At that point Detective Minichiello went outside the restaurant to his car to get the money to pay for that cocaine and he gave the signal for the arrest of the two defendants.

When the agents went in to Grass to arrest the defendants they found Moses Weindling sitting at the table, but Patricia McIntyre was not there. They found her downstairs, and when they searched each defendant they did not find the three and a half ounces of cocaine.

You will hear evidence in this case that Patricia McIntyre got rid of that cocaine and therefore the Government was unable to seize it and present it to you here as evidence, but you will hear from the defendants' own lips that the second sample --

MR. ANOLIK: Objection. I would like to be heard at the side bar.

THE COURT: Why don't we avoid this and go on with the opening.

MS. COTE: Detective Minichiello will repeat words said by the very defendants --

MR. ANOLIK: I have to move for a mistrial at this point.

THE COURT: Denied.

MS. COTE: That the second sample of cocaine came from the very package that the three and a half ounces came from, and you will hear Detective Minichiello describe the three and a half ounces that he saw.

In addition, you will see what this case is all about because you will see the two samples of cocaine.

I know that Judge Owen has told you to keep an open mind, to listen carefully to all the evidence. That is something that each defendant and the Government wants you to do.

In addition, apply your common sense to what you will hear and when you do the Government submits that you will find both defendants guilty beyond a reasonable doubt and you will convict each of them of all the crimes with which they are charged in this indictment.

(11:55 A.M.)

MR. ANOLIK: Good morning, ladies and gentlemen, your Honor:

My name is Anolik. I represent the defendant Weindling. Stand up, please.

Thank you very much.

Mr. Weindling, in this case, has pleaded not guilty. That's why he is on trial here.

You heard the very able opening statement by Ms.Cote who is representing the Government. Ms. Cote I am sure when she said you will do this or you will do that meant to say that she will present evidence and that she would then ask you to do something. Of course, you realize that you are not required to do anything the Government asks you to do. Your job will be defined to you by Judge Owen who will instruct you in the law following the conclusion of the case.

We do not believe that the evidence will show that the defendant Weindling committed any crime. I am speaking only for the defendant Weindling. Of course, we don't think you will find any crime comitted by either defendant, but Mr. Joy is quite able to speak on behalf of Ms. McIntyre.

The prosecution, which is represented by Ms. Cote here, has the obligation, as you listen to the evidence, of proving guilt beyond a reasonable doubt, and his Honor will define that to you so I will not attempt to do that, but I ask you in listening to the evidence you listen to the evidence carefully.

You will hear evidence, I am sure, along the lines that Ms.Cote has indicated. To this extent: That there was a meeting with my client.

My client, ladies and gentlemen, was a user of cocaine. He is not being charged with being a user. He is being charged with a crime of distribution, so bear in mind that if the evidence proves merely he is a user and he had a small amount for his own personal use, that is not what is charged in this indictment.

I ask you please to be very, very careful, very, very careful. It is a habit, unfortunately, which my client picked up while he was in the Army.

And that is the sum and substance of what happened.

We maintain that the evidence here will not show what the Government says it will show. We maintain that rather sophisticated detectives and agents approached my client knowing that he was a user, and were trying to inveigle him to work for them so that he could perhaps get them some business so they could justify their arrest records and whatnot. That is why there was a meeting.

I ask you to listen very carefully to the rather lame excuses that you are going to find coming from the lips of the witnesses called by the prosecution as to why this three and a half ounces of cocaine was never found.

How can anybody, unless he has the ability to chemically analyze substance by touch, determine that something is or is not cocaine?

You heard the prosecutor just say that when he touched something he knew it was cocaine, which I think you will find a little ridiculous. But I ask you to listen to the evidence and we maintain, ladies and gentlemen, when this case is over, we will have a perfect right, not because of sympathy, not because of prejudice, but we will have a perfect right to come before you and ask you to find this young man not guilty of the charge here. The charge is very, very serious.

I think we will have the opportunity to cross-examine witnesses and I think, ladies and gentlemen, when the case is over you will have reasonable doubts because remember that the Government has the only burden in this case. There is no burden on the part of the defendant. He does not have to prove or disprove anything, but we maintain that the Government will not meet their burden.

One or two other things I would like to point out.

This case is entitled United States of America against Moses Weindling and Ms. McIntyre. His Honor has briefly adverted to it, but I ask you to please bear in mind that all cases of a criminal nature in this country, that are Federal cases, are entitled United States of America against someone. Please don't attach any particular importance to the nomenclature of the case itself.

I ask you to please bear in mind that Mr. Weindling is on trial here because he has pleaded not guilty to each and every charge in this indictment.

Thank you.

MR.JOY: Judge Owen, ladies and gentlemen of the jury:

My name is Leonard Joy, and I represent Patty McIntyre, seated at the table next to me.

As you heard, the Government and Mr. Anolik state this is a serious case and Patty McIntyre is accused of a serious crime. She is accused of conspiracy, distributing a sample of cocaine, and possessing with intent to distribute three and a half ounces of cocaine.

You are going to hear a lot of testimony from Government witnesses. I'm going to ask you to listen to that proof or that evidence very carefully.

Now, some parts of it are going to relate solely to Moses Weindling. Other parts of the testimony may relate to both Ms. McIntyre and Moses Weindling.

There are two defendants on trial and you are going to have to separate that evidence which pertains to Moses Weindling and that portion of it which applies to my client, Patty McIntyre.

I think that when you hear the testimony you will be convinced that what happened in this case was that Patty McIntyre, one of Moses Weindling's girl friends, came along to lunch on April 28th and had the misfortune of being present both then and the night at the Sixish Bar & Restaurant, when Moses Weindling is alleged -- I say "alleged" because I don't know what the proof is as far as Mr. Weindling is concerned -- to have had a transaction or entered into negotiations for a transaction involving cocaine.

I think you will find that the Government has not proven to your satisfaction beyond a reasonable doubt, and that indeed is their burden, that Patty McIntyre played any role whatever, any knowing role, in the transactions that the Government is attempting to prove. So I ask you to listen carefully to the testimony, direct and cross-examination of the Government's own witnesses, and I think that after you hear that testimony you will believe that the Government has failed to carry its burden of proving that Patty McIntyre knowingly played some role in the transactions of which she is accused.

Thank you very much.

MS. COTE: The Government calls its first witness, Detective Minichiello.

ANTHONY MICHAEL MINICHIELLO,

called as a witness by the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MS. COTE:

Q Would you please tell the jury by whom you are employed?

A I am employed by the New York City Police Department.

Q How long have you been with the Police Department?

A In January it will be fourteen years.

Q What position do you hold with the Police Department?

A I am a detective.

Q What is your current assignment?

A I am assigned to the First Homicide Zone in Manhattan detective area.

Q Was that your assignment in April of this year?

A No, it was not.

Q Where were you in April?

A I was assigned to the New York Drug Enforcement Administration Task Force.

Q What is the New York Drug Enforcement Administration Task Force?

A It is an agency composed of State, Federal and City personnel, that was created approximately five years ago to combat the heroin and cocaine trafficking in the metropolitan area of New York City.

Q How long were you with the Task Force?

A Almost six years.

Q So that's from approximately '71 to '77?

A That's correct.

Q Directing your attention to April 28 of this year, were you working that day?

A Yes, I was.

Q What kind of work were you doing?

A I was working in an undercover capacity and I was at the Drug Enforcement Task Force office.

Q When you say you were working in an undercover capacity, what does that mean?

A Well, I was assigned to an individual by the name of Steve, and I was going to work with Steve in establishing cases. I would represent myself in some manner to a proposed target that we were going to work on that particular day.

Q What was the purpose of this undercover work?

A To establish a case against an individual and to obtain evidence and Intelligence information.

Q You said you were working on targets. What kind of individuals were targets for undercover work?

A A target would be someone that a cooperating individual stated that he could introduce an undercover police officer to. That would be a target.

Q Why would the introduction to a target be made?

A The purpose of the introduction was to obtain evidence and Intelligence information.

Q You have referred, I believe, to an individual named Steve. You have used the term "cooperating individual".

Could you explain exactly who Steve was and what that term means?

A Yes. Steve was a young man who was introduced to me by Special Agent Sandler. He was working with Special Agent Sandler in establishing cases. He was cooperating with the Drug Enforcement Task Force office.

Q Who is Special Agent Sandler?

A A co-worker.

Q Also of the Task Force?

A Yes. He's an employee of the Federal Government.

Q What happened on the afternoon of the 27th after Special Agent Sandler introduced you to Steve?

A I met Steve at the office at about four o'clock in the afternoon. Steve was using the telephone in the office and was making a series of phone calls to a New York City number.

Q Do you know what number he was calling?

A No, I don't.

Q Did you know on that afternoon what number he was calling?

A Yes, I did.

Q Did you make a report of the events of that afternoon?

A Yes, I did.

Q Did you incorporate that phone number in that report?

A I did.

Q Detective, let me show you what has been previously marked as Government Exhibit 3501B. I direct your attention --

MR. JOY: If this is going to be used for some kind of refreshment of recollection, can we find out what it is that he doesn't remember?

THE COURT: The phone number.

MR. JOY: That is what it is?

MS. COTE: Yes.

Q Let me direct your attention to paragraph 1. Read it to yourself.

(Pause.)

Q Does that refresh your recollection as to what that phone number was?

A Yes, it does.

Q Tell the jury what the phone number was that Steve was calling.

A 530-4089, the area code is 212.

Q Was Steve able to complete the calls he was making that afternoon?

A No. There was no answer. We had attached --

THE COURT: You have answered the question. "There was no answer."

Q I believe you had just finished telling us about the phone calls Steve was making at the office. What happened after you watched Steve try to make those phone calls unsuccessfully,as it turned out?

A About five o'clock Steve and Special Agent Sandler and myself left the office and we drove over towards the vicinity of 88th Street and First Avenue.

While we were going over there we stopped at an outdoor phone booth and Steve and I got out and I got out with a telephone recording device; and we went to a public phone booth. Steve made another phone call. I attached a device to the telephone and we got a busy signal.

Q Do you know what number he was calling this time?

A I believe it to be the same number.

Q You said he got a busy signal?

A Yes.

Q What happened after that?

A He called back again and had a conversation with someone and Steve said that he would have to make another call in a few minutes.

Q Did he in fact make that second call?

A We got into the car and we drove over to 89th Street and First Avenue, and at that location Steve and I got out of the car and Steve went to a phone booth. I was standing next to him and he made another call.

Q By the way, were you able to overhear any part of this conversation at all that Steve was having on the phone?

A I was able to hear Steve's part of the conversation, yes.

Q But not the part of the person with whom he was talking?

A That's correct. I was not able to hear that part of the conversation. Only Steve's.

Q The second phone call that he made, in which he had a conversation with someone, he called the same number again?

A Yes, he did.

Q What happened after that second phone call?

A He said we would be going over The Sixish Restaurant, on 88th and First Avenue. So Steve and I went over to The Sixish Restaurant. We went inside and sat down at a table in the rear of the restaurant.

Q Approximately what time was this?

A This was about 5:30.

Q What happened next?

A At about 5:40 a man came into the restaurant. This man was later identified as Moses Weindling.

Q Let me interrupt you at this point. Look around the courtroom and I ask you if you see the person who was introduced to you as Moses Weindling that afternoon.

A Yes. The gentleman there with the brown jacket.

MR. ANOLIK: We concede the identification.

THE COURT: Thank you.

Q What happened after Mr. Weindling was introduced to you by Steve?

A Mr. Weindling sat down at the table after I asked him if he was dealing a good product and he replied that he was, and he placed a clear plastic bag on the table. It was close to my hand and close to his hand.

He said, "Why don't you check it out?"

At the same time he handed me a spoon, a cocaine spoon. It was a white metal object that appeared to be the shape of a woman's body and at the base where the feet were was a little scoop at the end.

Q Can you tell us how large this spoon was?

A It was approximately an inch and three-quarters, an inch and a half.

Q Can you describe the package of cocaine with any more detail?

A It was just a clear plastic bag. It was folded up. It was not much bigger than a matchbook.

Q What happened after Mr. Weindling handed these two objects to you?

A I took the bag and I took the spoon and I got up from the table and I went into the bathroom of Sixish Restaurant. When I was inside the bathroom, I unfolded the bag and I took the spoon and I placed it inside the bag and moved it around a bit inside the white substance that was in the bag. I folded the bag back up, and with this spoon I went back to the table. I sat down at the table. Mr. Weindling asked me how I liked the sample.

MR. JOY: I object to any statements that were made by Mr. Weindling as hearsay as far as my client is concerned.

THE COURT: At this point I will overrule this objection, reserving your motion to strike at some later point.

Proceed.

A Mr. Weindling asked me how I liked the sample.

I didn't say anything, but I nodded my head affirmatively.

He smiled and said, "Well, that's the powder from the bottom of the bag."

He said, "What kind of weight are you interested in doing, one, two, three?"

I said, "What kind of weight are you talking about?"

He said, "Oz".

Q Do you know what "Oz" means?

A In street terminology it is ounces.

I told Mr. Weindling that I was interested in doing an eighth of a ki.

Q And what does an eight of a ki mean?

A An eighth of a kilogram.

Q And a kilogram is -- do you know how much that is?

A It's approximately four and a half ounces.

Q A kilogram is four and a half ounces?

A An eighth of a kilogram is approximately four and a half ounces. A kilogram is 2.2 pound or one thousand grams.

Q Was there any further conversation about how much you two were interested in dealing with each other?

A Well, I told him that I was interested in doing the four and a half ounces. He said that he had four and a half ounces at the house, but he could not sell all of it because he had some other customers coming over. He said he could sell three and a half ounces.

He suggested that I give the sample to Steve and have Steve check out the sample.

I maintained custody of the clear plastic bag in my right hand beneath the table and with my left hand I handed the cocaine spoon to Steve beneath the table.

Q What did Steve do at this point?

A He took the spoon from my hand, clenched his fist, got up and went into the bathroom.

Q Did you have any conversation with Mr. Weindling at the point when Steve was in the bathroom?

A Yes, I did.

Q Could you relate that conversation, please, to the jury?

A Mr. Weindling asked me how I knew Steve and how long I knew Steve and what Steve was doing for me, and I told him that Steve was working for me,that Steve was sitting on a telephone for me, and I was involved in gambling and Steve would take bets for me, and a short time later Steve returned.

Mr. Weindling asked him how he liked the sample and Steve said, "That's pretty good, Moses; it's real good."

So Steve sat down and we continued to have a conversation relative to the cocaine.

Q At this point what has happened to the sample and to the spoon?

A I had the sample in my right hand. Steve handed the cocaine spoon to me beneath the table. I took the spoon from Steve and I held both articles beneath the table.

Mr. Weindling said to me, "You can keep the sample, but I would like my spoon back", so I returned the spoon to Mr. Weindling and I took the sample and I put it in my sock.

Q Let me show you what has been previously marked as Government Exhibit 1 for identification. I ask you to look at it. See if you recognize it.

A Yes, I do.

Q How do you recognize that?

A There is a seal here that bears my name, and my initials, and the case number and the date.

Q Could you tell the jury what that is?

A This is the clear plastic bag that was given to me by Mr. Moses Weindling on April 27, 1977.

Q When you say "the clear plastic bag" could you describe exactly what you mean. For instance, there is a large plastic bag of about -- dimensions of about ten inches by sixteen inches. Is that the clear plastic bag you are referring to?

A Yes, it is. This is a clear plastic bag. Inside this bag is another small plastic bag similar to the type referred to as a baggie, and it contains a white substance.

Q Which of those plastic bags did you get from Mr. Weindling?

A The smaller of the two, the one that is inside this large clear plastic bag. This large bag was supplied by the Government for processing evidence.

Q I believe you said that you kept that sample in your hand and only gave Steve the spoon to take with him when he went inside to the bathroom.

A That's correct.

Q Why did you do that? Why did you not give Steve the sample to take with him, as you had taken it?

A I had received the sample from Mr. Weindling and I wanted to maintain custody of it. I questioned the legality at that time of giving a cooperating individual narcotic contraband.

Q You have taken us to the point at which Steve had come back and you had put the cocaine sample in your sock and returned the spoon to Mr. Weindling.

After that point was there any further conversation regarding drugs?

A Yes. I asked Mr. Weindling how much an eighth would cost and he said that it would cost, forty-six, forty-seven hundred dollars.

I told him that his prices were too high and a few minutes later I excused myself from the table and I went to a phone booth that was to the right -- there is another room to the right of the room we were in, and inside that room that was unoccupied by any patrons was a phone booth, and I called my office from the phone booth.

Q Was this telephone also toward the rear portion of the restaurant or was it towards the front? Where was it exactly?

A It was in the rear of the restaurant.

Q I don't think you told us exactly where the bathrooms were. Were they in the rear or the front?

A They were in the rear of the restaurant.

Q You made this phone call and then what did you do?

A I spoke with the base radio operator and I returned to the table.

Q What happened at that point?

A I continued to talk to Mr. Weindling and with Steve, and then Mr. Weindling said that he had to call his lady. He left the table, went into the room I had just come from, and a few minutes later he came back and sat down at the table. He said that Patty would be passing by the restaurant on her bicycle and he was going to go out and get her.

Q What happened after that?

A Mr. Weindling and I continued to talk and a few minutes later he got up from the table and he went outside and he returned with a female who was later identified as Patricia McIntyre, and a bicycle.

Q Do you see that woman in the courtroom?

A Yes, I do.

Q Point her out.

A It's the lady in the white dress.

MR. JOY: Identification conceded.

Q After Ms. McIntyre joined the group at Sixish, was there any conversation related to drugs?

A Yes. I continued to discuss the purchase of what Mr. Weindling had available, the three and a half ounces, with him, and after haggling about the price of three and a half ounces, we agreed upon a price of $3400.

Mr. Weindling indicated that he wanted to play a number. He wanted to bet a number. And he asked Ms. McIntyre for a number and she supplied him with the number 357, and he told me that he wanted to play 357 at a dollar a way, six dollars a day, as part of the deal.

Q What does it mean "a dollar a way"?

A That if the number 357 would come out in any one of six possible combinations he would win.

Q Can you give us an example?

A Well, 735, 357, 573.

Q Fine. Thank you.

Any other discussion regarding the price of the cocaine?

A And that it would be $3400 for the three and a half ounces.

We discussed having lunch the following day.

Mr. Weindling asked me for my phone number and I gave him the number of the undercover telephone at the Drug Enforcement office.

Q Relative to your discussion about lunch the following day, were there any details in that discussion?

A Yes, there was.

I asked Mr.Weindling if he was going to buy lunch and we laughed about it. It was rather light at that particular time. He said, "Yes, I'll buy lunch", and I said, "Maybe I'll buy lunch", and we joked about it and a short time later Steve and I left the restaurant.

Q Before leaving the restaurant had you participated in any conversation with Ms. McIntyre?

A Yes, I did.

Q Would you tell us the gist of that conversation, please?

A Among other things we discussed what Ms. McIntyre did for a living. She said she was a stewardess with I believe it was Eastern Airlines, and she said that her and Mr. Weindling had just been to Pittsburgh, Pennsylvania, and had a very pleasant weekend there. She said she was not working at the time because I believe she was injured or something, and she was out on sick report.

Q You said that you and Steve at some point in the afternoon left The Sixish Restaurant. Where did you go?

A I went to the Drug Enforcement Task Force office with Steve.

Q Did anything occur there relative to this investigation?

A Yes.

While I was processing the sample that Mr. Weindling had given me earlier, I was at the office and the phone -- the undercover telephone rang. It was outside in the hall and I went out to answer the phone and it was Mr. Weindling. He said he was surprised that I had reached my destination so soon and he went on to tell me that he could sell the four and a half ounces of cocaine because one of his customers had canceled out. So we discussed the price and we agreed on $4500 for four and a half ounces of cocaine.

Q Was that the total price for the cocaine?

A No. In addition the deal earlier with respect to the number was still in effect. I agreed that he could have that much action for a month.

Q When you say "action," what do you mean?

A Well, a play is referred to as action. I told him that I would accept that as part of the deal.

Q Anything else in that conversation that you remember at this time?

A I don't know if we discussed lunch or not at that time. I don't recall.

Q Did you meet with Mr. Weindling on the 28th as you had planned?

A Yes, I did.

Q Describe what happened.

A Steve and I went to Grass Restaurant at about 2:30. At about 2:35 Mr.Weindling and Ms. McIntyre -- I saw them crossing First Avenue. I was able to look through the windows of Grass Restaurant and I could see them approaching the restaurant.

I saw them --

Q Excuse me a minute.

About what time was this in the afternoon?

A About 2:35.

Q Could you tell the jury where Grass Restaurant is located?

A Yes. It's on 75th Street and First Avenue, New York City.

Q Can you just in general terms describe what Grass Restaurant looks like inside?

A It's a modern restaurant with a bar. It's a combination bar and restaurant with a sidewalk cafe-type dining that's enclosed in glass on the First Aveue side and a portion of it is on the 75th Street side. It has a lot of plants and a lot of artificial-type foliage hanging from the ceilings, and stuff.

Q I believe you were saying that shortly after you arrived you saw Ms. McIntyre and Mr.Weindling approaching the restaurant,through the windows in the restaurant, right?

A Yes.

Q What happened after that point?

A I saw them as they reached the corner of First Avenue and 75th Street, and I was anticipating their arrival to the table. They didn't come and I asked Steve to get them.

Steve was seated directly in front of me. He got up. He turned his body around a large pillar that was between the table and the doorway of the restaurant, and he came back to the table and sat down and a few seconds later Mr.Weindling and Ms. McIntyre sat down.

Q Could you please describe to us how Mr. Weindling was dressed that day?

A Yes. He was wearing a blue denim one-piece suit which is referred to as a jumpsuit. He was wearing knee-high boots and his trousers were tucked inside his boots.

Q Did he have anything with him?

A He was carrying an attache case.

Q Let me show you what has been marked as Government Exhibit 3 for identification. I ask you to look at it, without opening it up.

(Pause.)

Q Do you recognize that?

A It resembles the case that Mr.Weindling was carrying, yes.

Q Could you describe for us, please, how Ms. McIntyre was dressed that day?

A She was wearing a cream-colored white jumpsuit and she was carrying a brown handbag.

Q Did you have any conversation with either defendant related to drugs after they joined you?

A Yes, I did.

Q Could you please relate that conversation to the jury?

A I asked Mr. Weindling if he had the package and he said he could not sell the four and a half ounces as we had planned, but he did have the three and a half ounces.

I asked him to show the package and he said not to worry, that the package was at the restaurant but neither he nor Ms. McIntyre had it. He said he would give me a sample of the package.

I told him I would prefer to have the package, but he said all he had at the moment was a sample and he reached inside of his boot and removed a clear plastic bag from the boot and he handed it to me. He was seated to my immediate left. He gave me this plastic bag. I looked inside the bag. And I put it in my sock.

Q Can you describe that plastic bag and its contents in any more detail?

A It was a small clear plastic bag and there was a solid white substance that resembled sugar when it gets wet, how it solidifies and becomes one piece.

It was about as big as my nail. Maybe a little larger.

Q Just your thumbnail?

A This whole digit. About thumbnail size.

Q Let me show you what has been marked as Government Exhibit 2 for identification. I ask you to look at that carefully. Do you recognize that?

A I recognize the envelope and I recognize the plastic bag inside. However, I do not recognize this square packet. My name appears on the top of the envelope and on the face of the envelope and on the evidence tag that is inside the envelope, but the substance that was given to me was in a solid form, the substance that was given to me by Mr. Weindling.

Q What does that substance look like now?

A Powder form.

Q Is it approximately the same amount you would have expected that rock form to break down if it was ground down?

MR. ANOLIK: Objection, your Honor.

THE COURT: Yes. At this stage of the record I will sustain that.

Q Can you compare the quantity of powder you see before you with the quantity of substance in the rock that you got that day from Mr. Weindling?

A I would not be able to, no.

Q Was there any conversation after the point at which you got that sample of what you were told was cocaine from Mr. Weindling?

A Yes. Mr. Weindling said to me , "Why don't you check it out in the men's room", and I told him that I preferred to check out the package in the men's room.

He said that it would be an inconvenience for Ms. McIntyre if he were to provide the package at that time.

He said that he guaranteed that the quality of this sample was the same as the rest of the package and he said that the sample had come from the package.

I attempted to question him about that, but his replies were very vague and we continued to talk about the way the deal was going to go down.

Q Had Ms. McIntyre participated in this portion of the conversation at all?

A Yes, she did.

Q Could you tell us what she said?

A She said that they had tried out the package the night before, and she pointed with her pinky to a portion of skin close to her nostril and I could see that there was a slight discoloration, and she said it was so good it fucked up her nose. That was her comment.

Q Was there any further discussion by either defendant at this point regarding the cocaine?

A Yes. Mr. Weindling said that he was going to have to charge me an additional fifty dollars for the cocaine because it was costing him fifty dollars in order for the deal to go down this way. He said that he had people at the restaurant. I asked him what he meant by that and he said that, you know, "a lion never leaves his den."

He said, "I'm sitting here with the product. You should be coming to me."

I said, "I have money," and I said, "There is not very much you can buy with your cocaine." And he said that was not true. "Don't believe that." He said, "Look at what I'm wearing." And I looked at his clothing and he said that he had swapped it for cocaine, the jumpsuit and his boots and some of the other articles he was wearing.

Then he looked at Ms. McIntyre and said, "Show him your earrings, honey", and Ms. McIntyre moved her hair back and she was wearing some earrings.

Q Can you describe those earrings?

A They were yellow metal and they had white stones.

Q Any further conversation regarding how the deal would take place that afternoon?

A Mr. Weindling said that when the package arrived at the table that I would have to get the money and that the package would not leave the table unless the money was at the table.

We talked about the amount of money I was going to pay for the three and a half ounces, and we agreed on $3400 for the three and a half ounces, and in addition the play, the action on number 357, was standing, and Mr. Weindling said he would buy lunch at that time.

Q In discussing prices was there any conversation relative to the price of the sample that you had gotten that day?

A Yes. A little later on in the afternoon Mr. Weindling said, "You know if you wanted to buy just that sample that would cost you $200".

It was brought out in part of the negotiations. I told him he was charging me too much money and I would be a good customer because of my, you know, gambling ties and my ties with people that were into that, gambling and partying,and I would be a regular customer. I told him in the long run he would make more money from me.

He agreed. He said, "I'm making a lot of money on this deal." He says, "All right, we'll do it this way now."

Q Did he describe at any point or did either of the defendants describe at any point what you would be purchasing that afternoon?

A Mr. Weindling did.

He said that he saw the package and he was vouching for its quality. He said that there were three separate plastic bags. He said one had two ounces in it, one had one ounce, and one had a half ounce. He said that the sample had come from the two-ounce package, so it was a little shorter than two ounces.

He said that each package contained mostly rocks, similar to the one he had given me. He said there was very little powder in the bags.

That was about all he said regarding the descriptions of the bags.

Q Did there come a time during the course of your conversation when he discussed in any way his ability as a drug dealer?

A Yes, he did.

Q Could you please tell the jury what he said.

A He said that while he was in the Army he was stealing drugs. He was selling -- he said that much of the grass you could get fifty dollars for, and he said that they cannot figure out how he was doing it, meaning the Army people, and he said that they even kept him longer to try to figure out how he was doing it, but he said he was too clever.

Q Did he make any inquiries of you at any point in the afternoon?

A Yes. He asked me how I was going to cut up -- he said, "How are you going to whack it up?"

Q You just used the term "whack it up". What does that mean?

A How I was going to cut the cocaine, how I was going to add dilutants to it to prepare it for the street.

I told him that it was none of his business. I said, "You're asking too many questions".

He says, "In my business you have to be curious. I was only trying to help you out. I have a strainer here and I have some other things in case you need them", and I told him that I just gave -- I would give it to my people and they would take care of it.

Q What would a strainer be used for in the drug trade?

A Well, it can be used for a number of things.

In this particular instance you would take the rock form and run it through the strainer several times to turn it into a powder substance, and then you would mix it with dilutants in through the strainer, and that would be a process that would take a while.

Q What happened after your discussions about the cocaine?

A Well,after lunch Mr. Weindling looked in the direction of Ms.McIntyre and they had a very brief conversation which I could not overhear, and she got up from the table. I watched her as she walked to the rear of the Grass Restaurant and she descended the stairs.

Q Approximately what time was this, if you know?

A It was about 4:30.

Q Where were you positioned relative to the stairs in that restaurant?

A I was seated on the same wall as the stairs, but the stairs were at the extreme right of the restaurant and I was to the left of the restaurant, but on the same wall.

Q What happened next after Ms. McIntyre went towards those stairs?

A As she was walking towards the stairs and as she was beginning to descend the stairs, Mr.Weindling said, "She will be back with the package."

Q What happened next?

A I told him,"Well, when the package gets here I'll go get the money"--and he said, "Okay, fine."

A short time later I could see Ms. McIntyre coming up from the stairs and as she turned and started toward our table, Mr. Weindling smiled and said, "Doesn't she look good with $4500 worth of cocaine on her." I agreed with him that she did look good.

Q How long had Ms. McIntyre been gone from your table?

A Anywhere between seven and ten minutes.

Q What happened after this conversation you just finished relating that you had with Mr. Weindling as Ms. McIntyre approached?

A . She approached the table and Mr.Weindling was seated and while she was standing she took her handbag and gave it to Mr. Weindling and she said, "Here, honey."

Mr. Weindling took the bag, pulled the zipper on the top, opened it, placed his hands inside the bag, and then with his hand inside the bag and one hand on the bottom supporting the bag, he handed the bag to me, and below the table line he put it in my lap.

Q Where were you sitting at the table in relation to Mr. Weindling?

A I was seated to his right.

Q Were you on the same side or a different side of the table?

A We are on the same side of the table.

Q What happened when you got Patricia McIntyre's purse from Mr. Weindling?

A The zipper was open and Mr. Weindling had prepared the top of the bag for me so it was kind of open and he took his fingers out and I put my fingers in, and while it was in my lap I looked inside and I saw a little white envelope.

Q Can you describe that white envelope?

A It was about eight inches by about three inches, business-type envelope, and it had a flap on it, and it was not sealed, and I lifted the flap while it was still in my lap and inside this envelope was a brown paper bag, the type that you would get in a pharmacy. I could not find the opening to the bag, so I just punctured it with my fingers, and I pulled the top open.

Q How large is this brown paper bag?

A It was not very large at all. It was only about so big (indicating).

Q Continue.

A When I punctured the top I could feel the plastic beneath my fingertips and as I ripped it open, while it was still inside Ms. McIntyre's handbag, I could see three separate plastic bags, one being larger than the other two, and one was rather small.

Q So you saw three plastic bags of three different sizes?

A Yes.

Q Can you describe those plastic bags with any more detail than that?

A From what I could see and what I could feel with my fingers they were of the same substance that was given to me earlier by Mr. Weindling. They were of the same general size and consistency.

Q What are you describing now?

A The solid cube of cocaine that he had given me earlier, the rock.

Q You are comparing that with --

A What I saw in the three separate bags, three plastic bags, the rock-like substance in each, and a very small amount of powder.

Q Do you remember how many rocks you were looking at in these little plastic bags?

A I could only see a portion of each bag. I don't know the exact amount there was in each bag.

Q Can you compare the size of those three plastic bags? Were they larger or smaller than the sample you had received that day?

A They varied in size. Some were larger and some were smaller.

Q Are you referring to the rocks or to the bags?

A The rocks.

Q How about the contents of each of those three bags? Was the contents of each of those three bags larger or smaller than the sample you received that day?

A Well, they were all larger than the sample I had received.

Q Can you give any estimation as best as you can?

A Well, the larger bag appeared to be more than an ounce and one bag looked like an ounce and the other one was a lot smaller than an ounce.

Q Did you have any conversation at this point with either of the defendants?

A I spoke with Mr.Weindling.

Q What did you say and what did he say to you?

A I said, "All right," I said,"I will get the money," and he said, "No, no, take the bag with you."

I said, "Come on, man, I'll look ridiculous walking out of here with a lady's handbag."

He said, "All right, you're right," and I returned the handbag to Mr. Weindling and I walked towards the door and I left The Grass Restaurant, and I went to the car that I had driven there. It was parked outside -- to get the money.

Q What did you do at the car?

A I gave a pre-arranged signal to other surveillance officers and Mr.Weindling and Steve and Ms.McIntyre and myself were arrested.

Q Where were you arrested?

A I was arrested in the vestibule of the Grass Restaurant between the two doors. There is a front door and about five or six feet into the restaurant there was another door. In between is a coat room. I was arrested in that area.

Q How close were you to the table at which you had been eating lunch?

A I was about 40 feet away, 50 feet away.

Q Were you able to see it at that time?

A No. There is a pillar that was obstructing my view. I was not able to see the table. I was able to see officers at the table and I was able to see Mr. Weindling and Steve at the table.

Q Let me take you back just a minute and ask you to put yourselves in the point in time in which you are leaving the table to go to the car and ask you if you saw any surveillance agents as you were at your table at that point in the restaurant?

A Well, while I was seated at the table I was not able to see any.

Q Did you see any at any other point while you were walking out?

A Yes.

Q Could you tell the jury when that was?

A When I went to the other side of the pillar and started to walk out of the restaurant I saw a co-worker by the name of Investigator Hansen, a New York City police officer. I had a very, very brief conversation with him in a very low manner and I proceeded out the door. It was the kind of conversation while I was walking.

Q Can you tell the jury where Investigator Hansen was?

A He was standing inside the restaurant a few feet from the bar.

Q I believe you told us that you were arrested just inside the restaurant, is that correct?

A Yes.

Q What happened after you were arrested?

A I spoke briefly with Special Agent Sandler and Special Agent Panessa, and they were joined by Detective Mahone, and Detective Mahone removed me from The Grass Restaurant and took me to the Task Force office.

Q What did you do at the Task Force office?

A I remained on the 17th floor and processed the exhibit that was given to me by Mr. Weindling.

Q Did you yourself seize the three and a half ounces that you had seen in Patricia McIntyre's purse that afternoon?

A No, I did not.

Q Let me show you Government Exhibit 2 for identification again. You did seize this sample?

A Yes.

Q What had you done?

MR. ANOLIK: I object. He never said he seized that.

Q Did you receive that?

A Yes, I did.

MR. ANOLIK: He didn't identify it. He said it didn't look like the same thing.

MS. COTE: If I remember correctly he identified his name, initials and date on the evidence envelope in which it is contained.

MR. ANOLIK: I don't care about that. I'm talking about the item itself. He did not say he saw the same thing. He saw something solid. I think she should not put words in the witness' mouth.

THE COURT: Let me see that.

(Pause.)

THE COURT: Ask him what this is and what his connection is.

MR. ANOLIK: I don't want her to assume a state of facts.

THE COURT: Sustained.

Q Look at that exhibit carefully and tell me if you recognize it and how you recognize it and what it is.

A This is an evidence envelope that bears my signature and the date and the case number.

It also contains a clear plastic bag that has a seal on it that has been broken. That seal also bears my name, the date, and the case number. It further contains a white clear plastic bag that is hermetically sealed, that has a white powder in it, and it bears the initials "JPS". This is the substance that was given to me by Mr. Weindling on the 28th of April inside The Grass Restaurant.

Q How do yo[illegible]ow that?

A The seal bears my name and the date and the case number, and the envelope bears my name, the date, the case number and my seal appears at the top of the envelope right here.

Q What did you do with that sample after you received it from Mr. Weindling on the 28th?

A I processed it, I placed it into the heat-sealed envelope and I deposited it in the vault that was located at the Drug Enforcement Task Force office.

On the 29th, with the aid of the custodian, I removed it from the vault and hand-carried it to the chemist, which is on the 18th floor of the Drug Enforcement Task Force office.

Q Let me show you Government Exhibit 1 for identification. I will ask you to describe what you did with that exhibit after you received it from Mr. Weindling.

A I took this exhibit to the office and on the 27th I took a small portion of it from the bag and I field-tested it at the Drug Enforcement Task Force office. The remainder of the exhibit I placed in this envelope. I heat-sealed it. I weighed it. I dropped it into the vault. On the morning of the 28th, with the custodian, I removed it from the vault and I took it to the chemist, which is on the 18th floor.

Q You say you field-tested that sample. What does that mean?

A I took a very small amount of it and applied it to a pre-prepared acid and it turned a color which indicated to me that there was cocaine present in this particular sample.

MS. COTE: No further questions, your Honor.

THE COURT: We will break for lunch, ladies and gentlemen. It is seven minutes of 1:00. Regardless of what that tells you we will be in recess until two o'clock. At two o'clock if you go directly to the jury room, fine.

(Luncheon recess.)

AFTERNOON SESSION
2:10 P.M.

(In open court; jury present.)

ANTHONY MINICHIELLO resumed.

CROSS-EXAMINATION

BY MR. ANOLIK:

Q The name is Minichiello?

A Yes.

Q Detective Minichiello, you were assigned to tha **Bureau** of the **Drug** Enforcement program that you were in that caused you to be an undercover agent, is that correct?

A **Yes.**

Q Is that a voluntary job or is that assigned or what?

A I was selected for the job in 1971.

Q I assume therefore you were in that position for a period of time, is that correct?

A Yes.

Q How long?

A From '71 to '77.

Q Always undercover?

A No, sir.

Q How long did you play an undercover role?

A In that six years I performed undercover duties and I performed surveillance duties. My duties varied.

Q You mean you vacillate. Sometimes you are undercover and sometimes someone else is undercover?

A Yes.

Q You don't get a permanent assignment as undercover, is that correct?

A That's correct.

Q Let's say during this period around April of 1977, for how long a period of time had you been undercover?

A I was undercover in this particular case in April. That's the only case I was undercover in.

Q What grade detective are you?

A Third grade detective.

Q Are there any grades above third grade?

A Yes, there are.

Q Two other grades?

A Yes, there are.

Q What determines, if you could tell us, promotion in the detective squad in New York City?

A At the present time?

Q At that time in April.

A Nothing.

Q Nothing?

A There has not been grade in the detective division for three years and the only grade that was given out was recently with respect to the Son of Sam incident. That was the only grade that was made.

Q Everybody else is third grade?

A There has been a freeze insofar as advancement within the detective division for the past three years.

Q But in the Son of Sam case there were grades made?

A That's correct.

Q If you make a particularly good arrest or collar there is always the hope you will be recognized, isn't that true?

A At the present time no, it's not. Something like the Son of Sam case, the sensationalism of it, being a political year, there were grades given out, yes.

Q But if you don't perform in the detective squad you might be transferred back to uniform, isn't that true?

A Yes, that's true.

Q It would be fair to say that they expect a detective to perform, isn't that true?

A That's true.

Q Detective Minichiello, you say that there came a time you were introduced to someone by the name of Steve?

A Yes.

Q What was his last name?

A I don't know.

Q You don't know?

A No,sir.

Q What did he look like? Can you describe him?

A He was a white male, about 25 to 30 years old. About five, eleven to six feet tall, medium build, medium complexion, he had dark hair. I don't recall whether he wore a mustache or not.

Q What color eyes?

A I believe they were brown.

Q You are trained to observe these things, aren't you?

A Yes, I am.

Q Weren't you curious to know what his name was?

A Not particularly, no.

Q Who brought you to him originally?

A Special Agent Sandler.

Q Had you met Sandler before?

I worked with Sandler for almost six years on and off.

Q So you knew him pretty well?

A Right.

Q Is he the one who vouched for this fellow Steve?

A I don't understand what you mean by that.

Q He introduced you to someone who he said was a cooperating individual?

A Yes. He was an informer. He said he was an informer.

Q You used the term on your direction examination "cooperating individual" or "cooperating person". What was the term you used?

A Cooperating individual.

Q Would you tell his Honor and the jury what you understand the meaning of "cooperating individual" to be?

A He is someone who is working with our office and he is supplying information relative to people he knows that are trafficking in narcotics and he is cooperating either for monetary reward or he is working off a case that he is involved in.

Q So in other words he is looking for profit or he himself is involved in some drug violation that he is looking to gain some Brownie points or something, isn't that true?

MS. COTE: Objection, your Honor.

THE COURT: The witness can answer that yes or no.

Overruled. You may answer.

A Repeat the question.

(Question read.)

A No, that's not true. Not necessarily a drug involvement. Some people cooperate because they are civic-minded citizens and other people are working off a case which may not necessarily be drug-related.

Q But they themselves are involved in some criminality?

A Yes.

Q So they feel by showing their cooperation and by supplying someone whom they will tell you is involved in drugs, they might help themselves in their own case?

A Yes. By helping us, they are helping themselves.

Q You also said this fellow Steve was a person whom you would not even trust with any amount of narcotics, do you remember that?

A I didn't say I would not even trust him.

Q You said it would be inappropriate to let him take narcotics into a bathroom at that time.

A It is the policy and guidelines of our office that we are not supposed to give or offer narcotic contraband to informants at any time and only under extremely hazardous circumstances where the informant has to get actively involved,then you permit it. If it is not necessary you try not to permit it to happen.

Q Which means that these informants therefore are not treated in the same role as an agent would be treated, isn't that true?

A That's true.

Q There is a certain amount of distrust, isn't that so, or shall I say caution with respect to dealing with these people?

A Yes, there is.

Q These people have not taken an oath, have they, like you have taken when you were sworn into your job, isn't that true?

A They don't take an oath.

Q You don't know the background of this fellow Steve at all, do you?

A I know a little of his background, yes.

Q Was he involved in drugs, do you know; yes or no?

A I don't know.

Q There came a time that you met Mr. Weindling, do you remember?

A Yes.

Q Would you just tell us again when that was about?

A April 27, 1977, at about 5:40 P.M., inside Sixish Restaurant at 88th and First Avenue, Manhattan.

Q Did you make any report of that meeting?

A Yes, I did.

MR. ANOLIK: May I approach the prosecutor's table?

THE COURT: Yes.

(Pause.)

Q I show you what has been referred to by the prosecutor as 3501B. Would you look at this, please (handing).

A Do you want me to read it?

Q Look at it and tell me whether you recognize it.

(Pause.)

A Yes.

Q Was this a report that you made in connection with this case?

A Yes, it is.

Q By the way, this is typewritten?

A Yes.

Q You don't walk around with a typewriter when you function in the field, do you?

A No, I don't.

Q Did you make any handwritten notes?

A Yes, I did.

Q Where are those handwritten notes?

A They were destroyed.

Q Destroyed?

A Yes.

Q Detective Minichiello, on April 27th at 5:30, approximately, would it be fair to say that that was the first time you ever met Mr. Weindling?

A It was about twenty minutes to six. Yes, that was the first time I met him.

Q Had you ever spoken to him before?

A No, I did not.

Q Before this meeting with Mr. Weindling, did you know that you were going to meet someone by the name of Weindling?

A Yes, I did.

Q Who told you?

A Special Agent Sandler told me and Steve told me.

Q Steve being the person whom you described as a cooperating individual?

A Yes.

Q How long before this meeting would you say you knew that you were going to meet him or that you might meet him?

A I knew a day or two before that I might meet someone by the name of Moses Weindling.

Q Did you ever hear of a tape recorder?

A Yes.

Q Did you ever hear of a Nagra tape recorder?

A Yes.

Q Did you ever hear of a miniphone?

A Yes.

Q Does the Police Department or the Bureau that you were working for at that time have such equipment?

A Yes.

Q Did you use such equipment on this day?

A No.

Q Did there come a time that you met Ms. McIntyre that day?

A Yes.

Q About what time was that?

A About 6:10.

Q P.M., of course?

A Yes.

Q Had you ever met Ms. McIntyre before that, by the way?

A No, I never did.

Q I believe you stated that at this time on the

27th you had a conversation with Mr. Weindling about drugs, is that correct?

A Yes, I did.

Q Did Mr. Weindling start the conversation or did you?

A I did.

Q You say there came a time -- and I am referring to your direct examination to save some time -- that he showed you something in a plastic envelope, a plastic bag, is that correct?

A Yes.

MR. ANOLIK: Do we have Exhibit 1?

MS. COTE: Right here.

Q Is this Exhibit 1?

A Yes, it is.

Q And wherein do you say the drugs that were shown that day, wherein are they contained?

A In this bag right here.

Q There is like a knot around it?

A Yes.

Q It's right in the tip here, is that correct?

A Yes.

Q At that time can you tell us whether or not Mr. Weindling discussed gambling or betting on any number or something with you?

A At what time?

Q During this general conversation, during some point in the conversation.

A Yes.

Q In fact he placed a bet, isn't that true?

A That was part of the deal, yes.

Q Isn't it a fact you were introduced by Steve as a gambler?

A Yes.

Q You were not introduced as someone in the drug business, were you?

A No, I was not.

Q When Mr. Weindling showed you, as you claim, Exhibit 1, he said, "Take it in the bathroom," and he gave you a little spoon, is that right?

A He said,"Check it out."

Q You didn't actually check it out, did you?

A No, I did not.

Q You were alone in the bathroom at that time, weren't you?

A Yes, I was.

Q Did you have any testing equipment with you at that time?

A No, I did not.

Q You had no equipment to test out a field test of anything?

A No, I did not.

Q Did you attempt to take maybe a little portion so you could preserve it later for a test at your laboratory?

A No, I did not.

Q As a matter of fact, you returned it to him the way he gave it to you, more or less, is that true?

A I never returned it to Mr. Weindling.

Q What did you do with it?

A I held it in my hand and when I sat down at the table I held it beneath the table.

Q He didn't ask you for it?

A No.

Q What would you say the quantity of that was, about?

A The quantity?

Q Yes.

A In weight?

Q Sure.

A It was between three and five grams.

Q Would you say it was about five grams perhaps?

A Possibly.

Q Would you look through this, look at it yourself, and tell me whether or not you have recorded anything concerning the weight of Exhibit 1 to which we were just referring. Look through it very quickly and tell me if there is anything that records the weight of that.

A Yes.

Q What? How much is it?

A It says approximately 25.6 grams gross weight of cocaine contained in a clear plastic bag.

Q Gross weight of 25 point something grams?

A Yes, that includes the envelope.

Q It includes the envelope. You mean this envelope?

A Yes.

Q What's the weight of the cocaine though?

A The envelope weighs approximately 21 grams.

Q How do you know?

A I know what it weighs.

Q Have you weighed it recently?

A I have weighed those envelopes many times.

Q There is about four point something grams of cocaine, is that right?

A Yes.

Q Or what you claim is cocaine, is that it?

A Yes. It's been analyzed as cocaine.

Q I'm not discussing that aspect. We are not talking about the analyzation. At that point in time you believed it to be cocaine?

A Yes.

Q You had not tested it at that point in time?

A No, I did not.

Q Consequently --

MS. COTE: Could Mr. Anolik make clear what point in time he is referring to?

THE COURT: This is in the bathroom or thereabouts?

MR. ANOLIK: Correct.

Q So at this point in time you didn't know it was actual cocaine, but you believed it to be that, isn't that true?

A Yes, sir.

Q What would you say the price of four point something grams of cocaine is?

A The price would be anywhere depending on the market, I would imagine, $75 to $125.

Q So he just gave you a little present of $75 to $125, isn't that true?

A Yes.

Q Didn't ask you for it and didn't say, "Why don't you go in and take a snort just to be sociable?" He didn't say that, did he?

A No.

Q He just said, "Well, you look like a guy who needs money, so here's $125 worth of cocaine. Just keep it for yourself." Is that what he said to you?

A No, he did not.

Q What did he say?

A He told me to check it out. I did. I went to the bathroom. I returned from the bathroom. I held it in my hand and I held the cocaine spoon in my other hand beneath the table.

Q But he asked you back for the coke spoon only?

A A short time later he did.

Q He didn't care about the cocaine, right?

A I don't know what he cared about.

Q Didn't he ever say, "Where is that cocaine?"

A No, he told me I can keep it.

Q He gave you a gift, right?

A He said, "You can keep the cocaine, but I want my spoon back".

Q You gave him back the spoon, right?

A Yes.

Q But he just said keep the cocaine, is that right?

A That's what he said.

Q He didn't say, "Look, maybe I want to play a number with the cocaine, I want this to be used as the money; instead of money I'm giving it to you to bet on some numbers," did he?

A No, he did not.

Q How was he dressed at the time, by the way, if you can remember?

A He was wearing a pair of tan trousers, a tan waist length jacket, and a red plaid shirt. I don't know what the other color of the shirt was. It was predominantly red.

Q He was not wearing a tuxedo or anything of that sort, was he?

A No.

Q He was not smoking $20 cigars or anything, was he?

A No, sir.

Q By the way, after that incident, did there come a time that you spoke to Steve with respect to this Exhibit 1, or that he spoke to Steve with respect to Exhibit 1? "He" meaning Mr. Weindling.

A Mr.Weindling -- repeat that.

Q I'll rephrase it.

Did there come a time that Steve got access to this Exhibit 1?

A No, sir.

Q Never?

A Never.

Q Is there any time you pretended to give access of Exhibit 1 to Steve?

A Yes, I did.

Q Would you just describe, if you don't mind, with me, with your Honor's permission, how you passed it. --

THE COURT: Mr. Anolik, let's try to do it so the record gets it. If that is inadequate, we will go from there.

Ask him what he did.

Q Show me what you did. How did you pretend to give it to him? Use your two hands, maybe you can do it that way.

A When I gave the exhibit to Steve?

Q When you pretended to give the exhibit to Steve.

A I held the exhibit in this hand (indicating).

Q Showing a clenched fist.

A Beneath the table. It was a round table. I had the spoon in my other hand. Both hands were beneath the table. I reached beneath the table with my left hand. I felt the post that separated the table and a little beyond that I felt Steve's hand.

Q Would you do me a favor, with your Honor's permission, and stand up, stand up for a moment, and pretend your hands are under the table and show the jury what you just demonstrated, pretending your hands are under the table.

A Stand up?

Q Stand up for a moment so the jury can see your hands. Pretend your hands are under the table and describe to the jury what you just showed me.

A I was leaning forward.

Q Don't put your hands under the table.

A I was leaning forward and I had my right hand and my left hand beneath the table. I reached with my left hand to Steve and I gave him the coke spoon. He removed it from my hand and he made a fist and he removed a clenched fist from beneath the table. I still had the clear plastic bag in this hand and it remained beneath the table during my conversation with Mr.Weindling.

Q Then Steve went to the bathroom, is that correct?

A That's correct.

Q He pretended that he took a snort?

A That's correct.

Q And then he came back, right?

A He pretended he took a snort when he came back, yes.

Q He said "great stuff"?

A He said, "That was very good, Moses".

Q What did he do? Did he give something back to you?

A Steve sat down at the table and reached beneath the table and I reached beneath the table and I took the cocaine spoon from his hand. At that time Mr. Weindling said he wanted his spoon back.

Q What do you think a spoon like that is worth with your experience in this field?

A Depends on what it was made of.

Q What do you think it was made of?

A Possibly silver.

Q Possibly silver. What do you think it was worth, just your estimate?

A Depends.

Q Do you think it was worth five dollars?

A Probably more than five dollars.

Q Ten dollars?

A I don't know. I cannot say.

Q $125?

A I don't think so.

Q It was not worth as much as the drugs, right?

A I would not think so.

Q Steve made no pretense at giving any bag back to Mr. Weindling at that point because he pretended to give it back to you, right?

A That's correct.

Q Now there came a time that you came to some arrangement or agreement with Mr. Weindling, did you not, whereby you said, "Well, I would like to buy an eighth of a ki"meaning an eighth of a kilo, "from you", is that correct?

A Yes.

Q You said before that an eighth of a kilo would be about four point something ounces, is that right?

A On the street an eighth of a kilo is approximately four and a half ounces.

Q Because a kilo would be 2.2 pounds, right?

A Yes.

Q So four and a half ounces would be just about an eighth, is that right?

A Yes.

Q Is that the language that they use, a ki, when they talk about a kilo?

A Who is "they"?

Q People in the drug business.

A Yes.

Q Mr. Weindling at that time said that he could supply that to you, is that what he said, or didn't he say that to you?

A He said he had that much at his residence at his home, he said, but he could only sell three and a half because he had customers coming over that evening and he didn't want to leave himself short.

Q Did you know where he lived?

A The exact address I did not, no.

Q Did Steve know?

A I believe he did. I'm not sure.

Q Did you ever hear of a search warrant?

A Yes, I have.

Q Did you attempt to get a search warrant for Mr. Weindling's home?

A No, I did not.

Q He said he had drugs there, didn't he?

A Yes, he did.

Q You didn't attempt to get a search warrant and bust in and seize the drugs?

A No, I did not.

Q Did you make a definite appointment to see Mr. Weindling the following day?

A Yes, I did.

Q What day was that?

A The 28th.

Q Of April?

A Of April.

Q 1977?

A Yes.

Q Where did you see him?

A We agreed to meet at Grass' restaurant.

Q That was a different restaurant than you had met on the first date?

A Yes, it was.

Q So you knew at least by -- what time was it that you left after having made this appointment, left the restaurant on the 27th?

A About 6:30, 6:35 I left.

Q Did you have a surveillance team with you at that time?

A Yes.

Q Where were they on the 27th?

A One officer I saw in Sixish Restaurant, the other officers I can't account for their whereabouts.

Q Which officer did you see in Sixish Restaurant?

A Police Officer Rinaldi.

Q Rinaldi?

A Yes.

Q R-i-n-a-l-d-i?

A Yes.

Q Where was he positioned with respect to you and the defendant Weindling?

A He was seated at the bar of Sixish Restaurant and he was about fifteen, twenty feet away.

Q Fifteen or twenty feet away. Was he facing towards you or away from you?

A I don't know.

Q Let's assume -- with your Honor's permission -- that the bench in front of his Honor is the bar. Where would the table be where you were sitting with Mr. Weindling?

A The table would be at the end of the blackboard.

Q About where this chair is located?

A Yes.

MR. ANOLIK: Would you say about twenty feet or so, Ms. Cote?

MS. COTE: I think that's a fair statement.

Not necessarily from where Rinaldi was seated.

MR. ANOLIK: I am giving a rough estimate. I am not that good at it, but the jury can judge. I say it's about twenty, twenty-five feet.

Q At any rate, were the seats facing the bar?

A The bar is designed somewhat like the Judge's bench. It's pretty much designed like this, only larger and longer.

Q Except that people would be facing this way while drinking, is that correct?

A Yes.

Q And you are sitting over there?

A Yes.

Q And as I'm facing now,so that the record can show it, my back or at least my left shoulder would be to the area you were sitting?

A Yes.

Q How was Mr. Rinaldi positioned, if you remember?

A I saw Mr.Rinaldi very, very briefly, because my back was to the bar, so I only saw him over my shoulder once.

Q You really could not say for sure?

A No, sir.

Q On the 27th you arranged to meet the defendant the following day?

A Yes.

Q So there again you knew that you had an appointment with someone whom you suspected of dealing, as you say, in cocaine, is that right?

A Yes.

Q Did you have any tape recorder with you on that day?

A No, I did not.

Q Did you meet him on the 28th? Did you meet Mr. Weindling on the 28th of April?

A Yes.

Q Where did you meet him?

A The Grass Restaurant.

Q About what time?

A At about 2:35 in the afternoon.

Q Would you tell me who was with you at that time?

A I was with Steve, the informant.

Q Again with Steve?

A Yes.

Q Would you tell me whether or not you had anybody else with you?

A There were other officers in the restaurant, yes.

Q Who were the other officers in the restaurant?

A Special Agent Panessa, Special Agent Sandler, Detective Daly, Detective DeRosa, Detective Mahone was there too.

Q M-a-h-o-n?

A M-a-h-o-n-e.

Q They were all at the bar or the restaurant?

A In the restaurant.

Q Would they be a surveillance team, so to speak?

A Yes.

Q Now on this occasions could you tell whether they were looking in your direction, if you know, if you remember?

A At times they were.

Q Did they also know what was supposed to transpire?

A What was to transpire?

Q Yes.

A Yes; they were aware of what was possibly to transpire.

Q What had you told them? Did you tell them, yes or no, that there was a possibility you might be able to make a buy of three and a half or four and a half ounces of cocaine?

A It was going to be a buy-bust situation for an eighth of a kilo of cocaine.

Q In the remote possibility that someone on the jury does not understand what you mean by "bust", please explain to them what you mean.

A That when the contraband was offered for sale there would be no moneys transacted for it, that we would arrest the people in possession of it, and that the deal wouldnot be totally consummated, the money would not change hands, I would not lose control of the money in this particular situation.

Q Mr. Minichiello, I wonder if you would do me the favor of raising your voice a little bit. I am having a little difficulty hearing you.

A All right.

Q So the bust part of the buy is the arrest, is that correct?

A Yes.

Q Would that be a colloquialism for arrest,"bust"?

A Yes.

Q By the way, had you told your superiors or your coworkers on the 27th when you left Mr. Weindling and Ms. McIntyre, did you tell them you had met a person named Patricia McIntyre?

A I told them that I met a female named Patty.

Q Did you describe her?

A Yes, I did.

Q So at that point in time they had a description of her and possibly Agent Rinaldi had actually seen her and you certainly had seen her and certainly Steve had seen her?

A Yes.

Q The next day, the 28th, there did come a time you actually met Mr. Weindling, right?

A Yes.

Q And that was in the early afternoon?

A 2:30 in the afternoon, 2:35.

Q 2:35 in the afternoon. What was the conversation when you met Mr. Weindling then? Did he ask whether his number hit?

A He asked me that some time during the day, during our lunch, yes, he did.

Q Had it hit?

A I told him it was too soon. That the number had not come out yet.

Q Do you have any experience in gambling,by the way?

A Only of my own personal knowledge.

Q Where you yourself gambled?

A Prior to being a police officer I engaged in gambling. I played numbers when I was a young man.

Q You were not totally unfamiliar with his bet?

A I was not unfamiliar with it, no.

Q There came a time you say on the 28th when Mr. Weindling told you something about a quantity of cocaine that he claimed he would deliver to you. What did he say about that?

A He said that he cannot sell the four and a half ounces as he had planned and that all he had was three and a half ounces. He said it was at the restaurant, but neither he nor Ms. McIntyre had it.

Q You said that you had the money but you didn't have it with you either?

A I said I had the money, it was in the car.

Q So what did he say to you?

A He said, "Well, when the drugs are on the table, the money will have to be here", and I said it will be.

Q At that point in time what did you do and what did he do?

A At what point in time?

Q When he said when the money is here, the drugs will be on the table.

A We continued to talk.

Q Didn't there come a time that you went for the money?

A Yes.

Q That was after though you claim you saw the drugs, isn't that true?

A Yes.

Q But you didn't actually see the drugs. You felt something you claim in a purse, is that correct?

A I felt -- pardon me?

Q You didn't actually see the drugs on the table. You didn't take it out or sniff it or anything of that sort?

A No.

Q What did you do?

A I saw it through a clear plastic bag and felt it through a clear plastic bag.

Q You never felt the actual drug or alleged drug, right?

A I felt it through a clear plastic bag. I never removed it from the bag, no.

Q At that point in time you felt it, what did Mr. Weindling say to you then about the money?

A He said, "Here, take the bag".

Q With the drugs in it, right?

A Yes.

Q You have not paid him for it yet?

A That's correct.

Q How much was this worth about if it in fact contained that much drugs?

A Well, I was going to pay $3400 for it if the deal had been consummated, plus approximately $180 worth of action for a month, so I guess it would be worth anywhere between $3400 and $3700.

Q So he was going to say in effect here take this $3700 in drugs, walk out of the restaurant with it, and then come back with my money; is that what he said to you in effect?

A Yes.

Q In other words, it is your testimony before this jury that he was telling you, whom he had only met once, the day before--is that correct?

A Yes.

Q That you can take out this $3700 worth of drugs and he would sit there and you would come back and pay him for it; is that correct?

MS. COTE: I object both to the tone of voice and also to the fact that it is a fairly argumentative way of asking the question.

MR. ANOLIK: I apologize if my tone is of a higher decibel, but it's to test credibility.

THE COURT: I sustain the objection on the second ground.

MR. ANOLIK: Thank you. I don't intend to argue with the witness; I will rephrase the question and try to diminish the decibels. I didn't think they were that high.

THE COURT: They were.

Q Officer Minichiello, is it your testimony that you were offered the opportunity to take these drugs with you out of the restaurant and that you would then be expected to return with money for them; is that your testimony?

A Yes, it is.

Q If you obtained those drugs, wouldn't that have been all the evidence you would have needed to obtain an arrest, to effectuate an arrest?

A Yes.

Q Could you please tell us why in the world you just didn't take the drugs and turn it over to an agent and pretend to be arrested?

A As I testified earlier they were in a lady's handbag, Ms. McIntyre's handbag, and prior to that my conversation with Mr. Weindling indicated that at no time would I be permitted to take the drugs from the restaurant unless the money was at the table.

Q But he told you you could?

A At the very last minute Mr. Weindling said, "Take it, take it", and I didn't take it.

Q Did you ever hear of Maxwell Smart?

A Yes.

Q Let me ask you this: If you have $3700 worth of drugs in your possession, would that be sufficient to predicate a phony arrest on?

A Yes.

Q So you went out, you pretended to go out of the restaurant at that point in time, is that right?

A Yes.

Q Is it your testimony that Ms. McIntyre also left at that time or before?

A I never testified that Ms. McIntyre left the table.

Q Do you know where Ms. McIntyre was at that point?

A She was at the table when I left the table.

Q Do you know whether or not she left the table during the period of time you were gone?

A I know that now, yes.

Q I'm not asking you what you know now. If you know that now it's because someone told you. I'm asking you what you know of your own knowledge.

A No, sir.

Q So in other words, as far as you know she never left the table; isn't that true?

A As far as I know she never left, yes.

Q When you came back what happened?

A I never got back to the table.

Q You were brought back to their presence eventually

A No, sir.

Q Did you ever see them again after that?

A No, sir.

Q You were not put into their presence after the arrest?

A No, sir.

Q Can you tell us whether or not they were aware that you were allegedly arrested? When I say "they", I mean the defendants here.

A I don't know that, sir.

Q Why were you arrested altogether then?

A I was arrested as part of the plan to protect the informant and to further the case.

Q They didn't know you were arrested?

A They passed me as they were leaving the restaurant.

Q That's what I wanted to know. You did see them again?

A They passed me. I didn't see them but they passed me.

Q Were your eyes closed?

A My back was to them.

Q How did you know they passed you then?

A I could see them as they were being brought to the door and I could hear them as they passed by. Mr. Weindling was talking rather loudly and was talking to the other officers, and Ms. McIntyre was passing with him.

Q So therefore would it be fair to say then an officer with your training that you could infer they were passing you?

A Yes.

Q You were aware of their presence as they were leaving the restaurant?

A Yes, sir.

Q And would it be fair to say that they probably saw you then, right?

A I would think they saw me.

Q Were you in handcuffs at the time?

A Yes, I was.

Q But you didn't physically see them though?

A No, sir.

Q It was your testimony, was it not, that no quantity of drugs, meaning cocaine, certainly not the alleged three and a half ounces of drugs, were ever seized that day or any other day, from these defendants; isn't that true?

A That's not true.

Q What do you mean it's not true?

A The sample that was given to me by Mr. Weindling --

Q I'm talking of three and a half ounces.

A That was not seized, no, sir.

Q I'm not talking about samples. I'm talking of three and a half ounces. That was not seized?

A That's true.

Q It was never found, is that so?

A That's true.

Q Would it be fair to say that we only have your word for it that it ever existed?

A That would be fair to say.

Q I show you Exhibit 2,

MR. ANOLIK: By the way I have been referring to these in evidence. These are for identification. I would like to retroactively amend my description of them.

Q I show you Exhibit 2 for identification. Is it your testimony that this Exhibit 2 is not in the same form as you saw and felt allegedly on the 28th of April?

A That's correct, sir.

Q You saw nothing in a powder form as this appears to be?

A That's correct.

MR. ANOLIK: One moment, your Honor.

(Pause.)

MR. ANOLIK: I have no further questions, your Honor.

CROSS-EXAMINATION

BY MR.JOY:

Q Detective Minichiello, on the 27th of April what time did Patty McIntyre arrive at The Sixish Restaurant?

A It was about ten minutes after six.

Q At that time you had completed this transaction you testified to receiving,getting a quantity of cocaine, going into the men's room, coming out, and Steve going in and out, is that correct?

A Yes, sir.

Q Patty arrived on a bicycle, did she not?

A Yes, she did.

Q She brought her bicycle inside the bar, is that correct?

A Mr. Weindling did.

Q Mr. Weindling did.

He went out, did he not, to see if he could see her going by on the bicycle, is that right?

A Yes, he did.

Q When she came in somebody introduced her to you, is that correct?

A Yes.

Q Was that Steve then or was that Mr. Weindling?

A Mr. Weindling did.

Q Is it fair to say that when she came you had a certain amount of small talk, is that right?

A Yes.

Q During the course of the session at Sixish you had ordered and consumed some beverages, had you not?

A Yes.

Q What were they?

A Alcoholic beverages for four people.

Q What did you drink?

A I drank scotch and water.

Q How much scotch and water did you have?

A Two.

Q How many did Steven have?

A To the best of my recollection I think he had four.

Q He had four?

A Yes.

Q How many did Mr.Weindling have?

A I believe he had two.

Q Did you consume these during the course of this transaction?

A Yes.

Q How long were you in Sixish Restaurant from the time you entered to the time you left?

A Approximately an hour, an hour and five or ten minutes.

Q When Patty came in she mentioned to the group that she was going to get air in her bicycle tire, did she not?

A She mentioned something about her bicycle.

Q You also had a discussion about numbers, did you not?

A Yes, I did.

Q You were trying to explain to her what the numbers were all about, isn't that right?

A Mr. Weindling explained to her what the numbers were all about.

Q You were talking to her, were you not?

A Yes, I was.

Q Going back to when you went into the bathroom, the men's room, what was it you were supposed to be doing with the cocaine in the men's room?

A I was supposed to be checking it out. By that I was supposed to be snorting, tasting it.

Q What you do with cocaine is sniff it mainly, do you not?

A Yes, you do. You sniff it.

Q Had you ever sniffed cocaine?

A No, sir.

Q How many times have you made arrests regarding cocaine?

A I have been involved in more than fifty arrests involving cocaine.

Q And at none of those did you ever sniff it?

A No, sir.

Q There came a time when you left The Sixish Restaurant, is that right?

A Yes.

Q Did you leave alone or were you with someone?

A I left with the informant, Steve.

Q Did Patty and Mr.Weindling leave at the same time?

A No, sir.

MS. COTE: Excuse me, your Honor. I felt there was an ambiguity in that question. In the same time as whom.

THE COURT: The same time as he left.

MS. COTE: Thank you.

Q And the answer is no?

A No, sir.

Q Did Officer Rinaldo -- what was the officer's name?

A Rinaldi.

Q Did he leave?

A Yes, he did.

Q Did he leave before you or after you?

A I believe he left before I did.

Q You had a backup team outside, is that right?

A I don't know where the backup team was, sir.

Q Before you went to The Sixish Restaurant,didn't you have a meeting where you discussed where everybody would be?

A No, sir.

Q How many officers were in the backup team on the 27th?

A Including Officer Rinaldi?

Q Yes.

A There were two others; one joined the group later on, but originally there was one inside and one outside.

Q Did you see the officer outside?

A I saw him later on, yes.

Q You saw him when?

A After I had left the restaurant and made arrangements to meet him at a pre-arranged location, via radio, that's when I saw him.

Q You had no meetings or no conversations with anyone before you went to The Sixish Restaurant, is that correct?

A No, sir. That's not correct.

Q With whom did you have conversations?

A Special Agent Sandler.

Q Anyone else?

A I spoke with the informant, Steve. That was all.

Q You didn't speak to anyone else as to what you were going to do that night?

A I might have.

Q Can you think of anyone else you talked to?

A No, sir.

Q You indicated you made a telephone call during the course of the time you were in The Sixish Restaurant, is that right?

A Yes, sir.

Q To whom did you make that call?

A Base radio operator.

Q Did you speak to anybody?

A I spoke to the operator.

Q But you didn't speak to Sandler or any other members of the backup team?

A No.

Q The next day you met Patty and Mr. Weindling at The Grass Restaurant, is that correct?

A Yes.

Q How many backup agents were there on that day?

A Somewhere between five and seven.

Q Did you see any of those agents inside the restaurant where you were sitting?

A At what time of day?

Q There came a time when you and Steve and

Patty and Mr. Weindling all sat down at the table, did there not?

A Yes, sir.

Q At that point were there any other agents seated in the room?

A Yes, there were.

Q Could you see them?

A I could see three of them, yes, sir.

Q Were they seated at tables?

A Yes, they were.

Q Did they leave at any time?

A Yes, they did.

Q When did they leave?

A There were officers in and out. Exactly when they left, I cannot say.

Q Were they eating lunch?

A They were having lunch.

Q They got through with their lunch before you left, isn't that correct?

A Yes, sir.

Q How many people were in this room where you were having lunch?

A The restaurant, I would consider it to be crowded. I would say there were anywhere between fifty, sixty people.

Q Where was your table located in the room? Was it in a corner or was it in the middle or where was it located?

A It was in the corner behind a pillar.

Q There were other tables next to it, were there not?

A Yes, there was.

Q There were people at those tables, were there not?

A Yes.

Q You were seated on the same side of the table as Mr. Weindling, were you not?

A Yes.

Q You were having a conversation with him about this transaction, isn't that right?

A Yes, sir.

Q You were not yelling out, were you? You were trying to keep this so other people could not hear?

A I was, yes, sir.

Q Across the table were Steve, the informant, and Patty McIntyre, is that right?

A That's correct.

Q They were having a conversation, were they not?

A Yes. During the two hours we were there they talked to each other, yes.

Q Patty was talking about a trip to Florida, was she not?

A There was a conversation regarding a trip to Florida, yes, sir.

Q As a matter of fact, she was also talking about a cat of hers that was in the veterinarian's, is that correct?

A A dog, I thought it was.

Q As a matter of fact, she said during the course of the lunch that she had to call up to find out how the animal was, is that right?

A Yes. If I remember, I thought it was a dog. I said a cat, but I believe at the time I thought it was a dog.

Q A dog or a cat, we are talking about an animal and she had to make a call to find out how it was?

A Yes.

Q You were also drinking on that day, were you not?

A Yes,I was.

Q As a matter of fact you were drinking gin gimlets, am I right?

A No, sir.

Q What were you drinking that day?

A I had one Bloody Mary.

Q One Bloody Mary?

A Yes.

Q That's all you had during that two-hour lunch?

A That's correct, sir.

Q When Mr. Weindling and Ms. McIntyre arrived you and Steve were at the table, were you not?

A Yes.

Q You had two glasses with some beverage in them at that table, did you not?

A There were many glasses on the table.

Q Hadn't you ordered a drink before they arrived?

A I don't believe so.

Q How much was the bill for the lunch and the drinks that day?

A I don't know. Mr. Weindling paid the bill.

Q He paid the bill?

A Yes.

Q You have no idea how much the bill was?

A No, sir.

Q Hadn't you agreed to spring for lunch?

A No, sir. Mr. Weindling agreed to buy lunch.

Q I mean the night before, didn't you say that you will buy lunch?

A We joked about it the night before. Mr. Weindling said he would buy lunch and I said I would buy lunch. We were playing around with the idea back and forth. It seemed very amusing to Mr. Weindling.

Q Weren't you talking about a three-stage thing? He was going to supposedly -- you were going to pay for some cocaine and then you were going to allow this play of the numbers and the third part was that you were going to buy lunch the next day, is that right?

A The lunch aspect of our deal was not firm, sir, it was something that we were playing around with. The other two parts of the deal were firm.

Q There came a time when Ms. McIntyre went down to the ladies' room, is that right?

A Yes, sir.

Q And then came back upstairs, is that right?

A Yes.

Q About what time was that?

A About 4:30, 4:35.

Q You had been there since 2:30?

A Yes, sir.

Q The waitress was coming by and asking you whether there could be anything more, right?

A She might have during the course of our lunch, yes.

Q As a matter of fact, she came with a bill, did she not?

A Yes.

Q Just about this time, am I right?

A Yes,sir.

Q When Patty got back upstairs, as a matter of fact the bill had already arrived, isn't that correct?

A I can't recall precisely when the bill arrived.

Q At that point Mr. Weindling said something along the lines of, "Honey, hand me your bag", is that right?

A No, sir.

Q He didn't say that?

A No, sir.

Q He never asked her for the bag?

A No.

Q There came a time when you had mentioned that Patty said something about the cocaine was good because they tried it the night before, is that correct?

A Yes.

Q And she as a matter of fact said that she had

-- it had done something to her nose, is that right?

A Yes.

Q A discoloration?

A She pointed to the skin just outside of her nostril and it looked -- there was a slight discoloration in the skin, and she said it was so good it fucked up her nose, and she asked me if I thought it would go away, and I said, "I think it will go away."

Q You were close enough to observe this, is that right? You were just across the table?

A Yes.

Q You prepare reports, do you not, about these instances?

A Yes.

Q The reason you prepare those reports is so that you can preserve evidence, is that right?

A Not entirely, sir.

Q So that if you are called upon to testify at some later time you can refresh your recollection by looking at those documents, isn't that right?

A Yes.

Q Did you put in those reports anything about this statement of Patty's regarding it was so good it did something to her nose?

A No, I did not, sir.

Q As a matter of fact when you testified before the grand jury you didn't mention anything about that statement, did you?

A No, sir.

Q Although you mentioned other statements that had been made; for example, Mr. Weindling saying, "Doesn't she look terrific with $3500 worth of cocaine on her?" You mentioned that?

A Yes, sir.

Q I believe you testified earlier that you are trained at observation, is that right?

A Yes.

Q YOu also indicated that Ms. McIntyre was wearing some gold earrings, I believe you mentioned, on the 28th.

A With white stones, yes, sir.

Q You were close enough to see all of this, is that right?

A Yes, sir.

Q Did you happen to notice the color of her eyes?

A I believe they are blue.

Q They are blue. Would you care to come down and take a close look at Ms. McIntyre's eyes?

THE COURT: Can we stipulate what they are?

MR. JOY: Can we stipulate that her eyes are in fact brown?

MS. COTE: If I may step towards --

MR. JOY: Maybe the witness would like to come down.

MS. COTE: The Government is willing to stipulate, your Honor.

THE COURT: We will have a stipulation.

Q There came a time after you had felt something in this bag that you left the room to go outside, is that right?

A Yes.

Q Did you see any agents at that time in the room?

A At what point?

Q When you left.

A As I was leaving the restaurant? Yes.

Q When you were in the room where you were seated?

A No, sir.

Q You did not see any agents, is that right?

A My view was obstructed by this pillar. I was not able to see.

Q You didn't see any agents?

A No, sir.

Q When you left Patty McIntyre was still seated at the table, is that right?

A Yes, sir.

MR. JOY: I have no further questions.

THE COURT: Any redirect?

MR. ANOLIK: I have a couple of questions. Should I wait for the Government?

THE COURT: Why don't you go ahead right now.

FURTHER CROSS-EXAMINATION

BY MR. ANOLIK:

Q Detective Minichiello, I believe you said that this bag, Exhibit 1 for identification, weighs 21 grams, is that right?

A Approximately 21 grams.

Q So therefore we decided there was about four grams of cocaine, of alleged cocaine, in the packet, is that right?

MS. COTE: I don't think that's an accurate recitation of the witness' testimony.

THE COURT: The jury's recollection will govern these matters.

Go ahead.

Q You said that it cost about $75 and $125?

A Depending on the market, yes.

Q Let's use a figure of $100 for the sake of this question. Is that satisfactory?

THE COURT: Put the question.

Q Three and a half ounces of cocaine, which was the amount you were to buy on the 28th of April, would be about 98 grams, is that correct?

A If it's true it's more than 98 grams, sir.

Q How much more?

A 28 grams in an ounce. A little more than that.

Q About 98?

A 98, 100.

Q Between 98 and 100 grams?

A Yes.

MR. ANOLIK: May I use the blackboard, your Honor?

THE COURT: Sure.

(Pause.)

Q That would be in three and one-quarter ounces of cocaine?

A Three and one-half.

Q I'm sorry. That's 98 grams, okay? That was worth about $100, is that correct, as a medial figure?

THE COURT: He didn't say that.

Q I'm talking about the four grams of cocaine worth about $100.

MS. COTE: Excuse me, your Honor. Can we have an offer of proof on this?

THE COURT: Mr. Anolik, he said between 75 and 125, depending on the market.

Q All right. 75 to 125. Is that correct?

MS. COTE: May we approach the bench?

THE COURT: No. Go ahead.

A I'm sorry? 98 grams, five and a half ounces?

THE COURT: Detective, you earlier said in your view there was approximately four grams in that Exhibit 1.

THE WITNESS: I said about three and a half, four grams.

THE COURT: And in your judgment that had a value of approximately $75 to $125, depending on the market?

THE WITNESS: Yes.

THE COURT: That's our starting point. Let's go from there.

Q If five and a half ounces is 98 grams, isn't it a fact that the three and a half ounces would only be worth about $2400 and not $3400, as you testified?

A No.

Q There are 25, 48 in 100, and you don't have

100 grams there?

(Pause.)

MR. ANOLIK: I will withdraw the question, your Honor.

THE COURT: You may have redirect examination.

MR. ANOLIK: I have not finished yet.

THE COURT: I'm sorry.

BY MR. ANOLIK:

Q By the way, do you know whether or not photographs were taken by the surveillance teams?

A I don't know, sir.

Q Did your bureau at that time own cameras?

A Yes.

Q Did they have film for those cameras?

A I would assume they did.

Q But you never saw any pictures?

A No, sir.

Q Were you present together with other members of your department on the 27th or the 28th of April 1977 before the arrest took place here, were you present when plans were made as to where the surveillance team would be or the backup team, where you would be, and things of that sort?

A There was an attempt to formulate some plans with respect to this case,but there is no set script you follow. You go the way the case goes.

Q Do you know whether anybody was assigned to follow the defendant Weindling if he should leave the room there for some reason should that contingency have arisen?

A I don't know.

Q Was anyone assigned to follow Ms. McIntyre if she should leave the room?

A I don't know that either.

MR. ANOLIK: I have no further questions.

MS. COTE: May we approach the bench?

THE COURT: Ladies and gentlemen, let's take a recess.

(Jury leaves the courtroom.)

MS. COTE: Your Honor --

MR. ANOLIK: Maybe the witness ought to leave the room.

MR. BELLER: We want a recess to prepare the redirect.

(Recess.)

(In open court; jury present.)

REDIRECT EXAMINATION

BY MS. COTE:

Q Detective Minichiello, where were you born?

A Brooklyn, New York.

Q Have you lived in New York all of your life?

A Yes, I have.

Q Do you have family in New York?

MR. ANOLIK: Objection, your Honor. Irrelevant and immaterial.

THE COURT: I will allow it because I assume that the Assistant has some idea of relevance here. I will allow it at this point.

Overruled.

Q Do you have family in New York?

A Yes, I do. I have parents, sisters, and a brother and a child living in New York City.

Q How old is that child?

A Eleven years.

Q How old were you when you became a police officer?

A I was 21 years old.

Q How long was it before you became a detective?

A I was promoted to detective in 1969.

Q So you had been on the force how many years?

A Fourteen years.

Q Have you ever received any awards and commendations for bravery and excellence in service during the time --

MR. ANOLIK: I have an objection.

THE COURT: I will overrule the objection.

Q Excellence in the form of duty during the time you have been a police officer?

A Yes.

Q Briefly describe what those awards and commendations have been.

A I received the Walter Scott medal for valor from Mayor Lindsay in 1968, for a shootout with a subject who had held up three liquor stores and shot another police officer.

MR. JOY: I object to that. It's inflammatory.

THE COURT: Overruled.

A I received a letter of commendation from Louis J. Lefkowitz.

THE COURT: Come up to the side bar.

(At the side bar.)

THE COURT: I suppose Ms. Cote can speak for herself. Unless I miss my guess, she is concerned that you have suggested to the jury that this man has perjured himself about the three and a half ounces in order to make a case to enhance his reputation in the police force, and she is trying to counter that suggestion by showing that he already had a good reputation and obviously, to the contrary, he had a desire to maintain it rather than destroy it by a false accusation.

Am I correct in that?

MS. COTE: Yes, your Honor.

MR. ANOLIK: I don't think they have a right to bring out self-serving statements. For all I know these are hearsay. How am I going to judge he is telling the truth even now? He can say anything he wants. This comes right under the precept of U.S. against Baum, your Honor. Baum says that they may not try a case by ambush.

THE COURT: Is this the McMahon case?

MR. ANOLIK: That's correct.

THE COURT: It has nothing ty do with this.

MR. ANOLIK: It was my case.

THE COURT: I don't think it applies.

MR. JOY: I think this is reputation. What they are trying to do is establish reputation. I don't think the way that you do that is by having self-serving statements.

THE COURT: He is saying, "I got particular awards".

MR. JOY: There is an implication --

MR. ANOLIK: I have interesting cross-examination. Let him do it.

(In open court.)

THE COURT: Objection overruled.

Q I believe you were about to describe a citation you received from Attorney General Lefkowitz. Describe that for the jury.

A I received a letter of commendation from Attorney General Lefkowitz regarding the incident I described earlier. That was a shootout with a suspect who had held up three liquor stores and shot another policeman. In addition, I received an award from the American Legion. I received eight excellent police duty awards that ranged from apprehending rape suspects armed with weapons, guns, knives, burglary suspects --

MR. ANOLIK: To preserve the record, we want to move for a mistrial at this time.

MR. JOY: I join in that.

THE COURT: Motion denied.

A A burglary suspect that attempted to hit me with a hammer, I received a meritorious police duty award for that incident.

Most recently I received an award from Mayor Beame for my work regarding the Son of Sam investigation.

Q You were assigned during the Son of Sam investigation to the New York Drug Enforcement Task Force?

A Yes. But I was sent over to the Queens

Homicide Task Force to work on the Son of Sam investigation two and a half months prior to its conclusion.

Q I believe you described awards and citations.

Did you receive any other commendations during your service as a police officer?

A I received a commendation that involved the disarmament of a young man who had pointed a gun at me and another police officer.

Q Have you ever been injured in the line of duty?

A Yes, I have.

Q On how many occasions?

A I have been thrown from the boardwalk in Coney Island. I was kicked in the groin. I was thrown down a flight of stairs. Approximately four different times I have been injured in the line of duty.

Q You have told us three. Do you remember the fourth?

A The other one was a sprain to my left hand. Grappling with a robbery suspect.

Q Detective Minichiello, have you ever received or do you know if it's customary for police officers to receive promotions for lying under oath in court?

MR. ANOLIK: I object to that. That's for the jury to determine.

THE COURT: I will sustain that objection. Not on the ground you urge, however.

MR. ANOLIK: I understand, your Honor.

Q When did you first meet the informant in this case, Detective Minichiello?

A On the 27th of April at about 4:00 P.M. in the afternoon.

Q After meeting the informant, did you ever learn whether or not the informant and Mr. Weindling had known each other prior to the occasion when you first met Mr. Weindling?

A Yes.

MR. ANOLIK: Objection. Hearsay.

THE COURT: That is overruled.

A Mr. Weindling told me that they had met in the Army and the informant told me they had met in the Army.

Q Did you learn during the course of your investigation whether or not the informant had ever known Ms. McIntyre before you met Ms. McIntyre?

A Yes.

Q Please describe that.

A When Ms. McIntyre entered the restaurant she embraced the informant, Steve, and gave him a big kiss and indicated to him that she had not seen him in a long time.

Q Which restaurant is this?

A Sixish Restaurant.

Q Detective Minichiello, you described handwritten notes that you made regarding the activities on the 27th and 28th.

A Yes.

Q You were not making those notes right during your meetings with the defendants Weindling and McIntyre, were you?

A No.

Q When did you make those notes?

A I made those notes at the Task Force office. I made some of the notes on the 27th and some of them on the 28th.

Q What happened to those handwritten notes of yours?

A The handwritten notes are destroyed upon completion of a typewritten copy. It's the policy of the Drug Enforcement Task Force offic.

Q So the typewritten copy --

MR. ANOLIK: Objection to summing up what the witness has said.

THE COURT: Go ahead.

Overruled.

Q I will phrase it more generally. How is the typewritten copy produced?

A The typewritten copy is typed by a typist from my handwritten notes. At the conclusion of the typing we compare the handwritten copy with the typewritten copy for accuracy, and then the handwritten copy is put into a shredder and destroyed.

Q I believe Mr. Anolik asked you a question of whether or not the sample you received from Mr. Weindling on the 27th was a gift or not. Do you know from the circumstances of that meeting and your conversations with either of the defendants what that sample was intended to be?

MR. ANOLIK: Objection, your Honor.

THE COURT: On what ground?

MR. ANOLIK: On the ground it is the operation of his own mind. If he wants to refer to a conversation, that is one thing, but he can't give the operation of his own mind.

MS. COTE: I believe I phrased the question to direct Detective Minichiello's attention to the circumstances --

MR. JOY: Could we not have that?

THE COURT: I will permit him to answer that with reference to any conversation, if there is such.

Go ahead.

Q Did you learn from any conversation you had with either of the defendants what that sample was intended for?

A Yes.

Q Would you please tell the jury?

A That was a sample of the product that Mr. Weindling was dealing. It was a free sample.

Q Did you learn from your conversation why he gave you that free sample of his product?

A It was for me to check it out and have my people check it out.

Q You recall Mr. Anolik asking you questions whether or not you used tape recorders on either the 27th or the 28th?

A Yes.

Q I gather from your years with the Task Force that you have been involved in many cases besides this one?

A Yes, I have.

Q And in fact you mentioned that you have participated in approximately fifty cocaine arrests during your years of work?

A Yes.

Q Could you tell the jury approximately how many heroin arrests you participated in one way or the other?

MR. ANOLIK: I object to that, your Honor.

THE COURT: Overruled.

A About 250 to 300.

Q Could you explain to the jury why a tape recorder kept on a person was not used on either the 27th or the 28th in this particular investigation?

MR. ANOLIK: I object to that, your Honor.

THE COURT: Overruled.

A A number of reasons: There was a possibility that I may have been frisked by either Mr.Weindling c Ms. McIntyre and this was one reason.

We wanted to guarantee the safety of the informant, Steve.

Another reason is that a request for a tape recorder generally takes more than a day, and we were pressed for time in this particular instance.

We only use tape recorders when we feel that this officer's life is in danger or there is a great deal of money involved.

MS. COTE: If I may have one moment, your Honor.

THE COURT: Yes.

(Pause.)

MS. COTE: No further questions, your Honor.

MR. ANOLIK: I have a few questions, your Honor.

RECROSS EXAMINATION

BY MR. ANOLIK:

Q Officer, you spoke to the Assistant United States Attorney during our recess, did you not?

A Yes,sir, I did.

Q At that time she inquired, did she not, about what commendations and medals you had received; is that so?

A Yes.

Q Didn't she tell you at that time it was necessary to rehabilitate your credibility? Did she say that to you?

A No, sir, she didn't.

Q Did she say you look bad because you could not explain --

THE COURT: Hold on. Counsel come up here.

(At the side bar.)

THE COURT: Do you have a good faith for putting that question exactly as you have put it?

MR. ANOLIK: I can't conceive of bringing this out otherwise. Why else?

THE COURT: I can. I want to know whether you have a good faith for suggesting to the jury that was the way the question was phrased to this man.

MR. ANOLIK: I can only infer it.

THE COURT: You do not have a basis for it.

MR. ANOLIK: By my experience --

THE COURT: You may not put it as if it is something you overheard and you are in effect putting it to the witness: "Isn't it true this is what she said to you?" That's the problem I have.

MR. ANOLIK: I didn't intend it to come out that way. I will rephrase it.

THE COURT: You may ask him, if you wish, what conversation he had with her. I don't want any suggestion she was putting this kind of thing here.

MS. COTE: Excuse me, your Honor. If there is any chance that the jury is left with the impression that the witness might have answered that question "Yes," we would prefer that the witness be permitted to answer that one question that is now on the record, and then for Mr. --

THE COURT: You can ask him that, if you want.

(In open court.)

THE COURT: Objection sustained.

Q You did have a conversation, did you not, with the Assistant United States Attorney during the recess just now?

A Yes, sir.

Q At that time can you tell us what the conversation was? Did she ask you anything about your reputation or the citations or awards you may have won?

A Yes.

Q Had you previously been asked about that during your preparation for this trial?

A Yes, I was.

Q When was that?

A About two and a half or three weeks ago. I believe it was my first or second meeting with Ms. Cote.

Q At that time you told her about all the things you just recited in court?

A All of them? No. I believe I told her about some of them.

Q But just this past recess you had another conversation about it, is that correct?

A Yes.

Q Did you have any conversation concerning the three and a half ounces of cocaine that you were questioned about?

A No, sir.

Q You testified also that you got a free sample of these drugs on the 27th, is that correct?

A Yes.

Q Did you ever receive a free sample of drugs before in any of your cases?

A Yes.

Q From whom?

A Various people.

Q It is commonplace to give away $125, $200 in drugs, or whatever it might be?

A In a narcotics transaction that is involving an eighth of a kilogram, yes, it is common to receive a sample of what you are going to purchase before the deal actually goes down, and it is common to get a sample of that quantity.

Q Without payment?

A Without payment at all.

Q It is your testimony that this was a commonplace occurrence and that you were not the least bit surprised in this case?

A There are cases in which you don't get a sample and others where you do get a sample.

idea as to whether or not Steve was a reliable informant other than what Agent Sandler told you?

A No, sir.

Q You had no independent knowledge of that at all, did you?

A No,sir.

Q You just testified about a number of citations and medals or awards that you received, is that correct?

A Yes, sir.

Q Were any of those in connection with a case involving a bust in a cocaine case?

A Yes, sir.

Q What was the quantity there?

A An eighth of a kilogram.

Q When was that?

A 1975, some time in 1975.

Q Did you get any award in connection with this case?

A No, sir.

Q When you got that award for that eighth of a kilogram bust, that went into your file, didn't it?

A Yes, sir.

Q If you had gotten an eighth of a kilo in this case you might have gotten an award here too, isn't that true?

A That's not true.

Q You might have?

A That's not true.

Q Why not?

A Because in the case I pointed out earlier there was a handgun involved and we were in the confines of a very, very small bathroom. There were two officers and one defendant in that bathroom, and he removed the gun and pointed it at the other officer and that's why I received an award. It had nothing to do with the contraband.

Q All of these cases you are talking about involved situations where danger was involved?

A Generally where your life is in danger.

Q When your life is in danger and you make an arrest, you receive an award very often, is that not so?

A Not very often. It occurs on occasion.

Q In this case, this was a run-of-the-mill case as far as you were concerned, is that true?

MS. COTE: Objection, your Honor.

THE COURT: Sustained.

Q In this case you say that you were concerned that you might be frisked?

A There was a possibility I might be frisked.

Q Did you tell anybody that you thought you might be frisked?

A No, sir, I didn't.

Q Did you make any effort to make any recording of a phone conversation with Mr. Weindling?

A Yes, I did, sir.

Q Was this a successful recording?

A It was unsuccessful.

Q So you don't have it?

A It didn't work.

Q It didn't work?

A No.

Q There was no photographic surveillance as far as you know, is that correct?

A As far as I know there was no photographic surveillance.

Q You have heard of zoom cameras and zoom movie cameras?

A Sure.

MS. COTE: I believe this is improper recross.

THE COURT: I will permit it.

You may proceed.

Q As a matter of fact didn't Mr. Weindling ever frisk you?

A No, sir, he didn't.

Q Did Ms. McIntyre ever frisk you?

A No, sir.

Q Isn't it a fact that he wanted to give you the purse containing the alleged narcotics and let you go to the car with it?

A Yes.

Q You didn't take it?

A That's correct.

MR. ANOLIK: I have no further questions.

THE COURT: Anything else?

RECROSS-EXAMINATION

BY MR. JOY:

Q When you were in The Sixish Restaurant,did you give a description to anybody of Patricia McIntyre?

A No, I did not, sir.

Q When you completed your day on the 27th did you write up your notes?

A I may have started them on the 27th and completed them, a portion of them, on the 28th. Exactly when I completed them, I don't recall. I may have wrote something down on the 27th.

Q That was with respect to the events of the 27th, is that right?

(At the side bar.)

MS. COTE: Your Honor, at this time I would like to turn over the 3500 material for Investigator Hansen. I turned over the 3500 material for Detective Minichiello the morning of the previous day.

MR. BELLER: I have one problem. I think after our last side bar when Mr.Anolik asked the question, without a basis for it, when he got back to the table I think your Honor said the objection is sustained. I think that might have pointed out Ms. Cote's problem here. We didn't want the jury to have the problem that we were afraid of the answer. I was wondering if you would point out the last time you said "Objection sustained", the Government did not object to the question, but your Honor had a question about Mr. Anolik's question.

MR. ANOLIK: I don't think that would be fair. I have no objection to them requestioning the witness.

MR. BELLER: There is no requestioning.

MR. ANOLIK: I don't think the Judge should pit himself against the defense in that matter.

MR. BELLER: The request is not for the Court to say that you had a personal objection, but simply that the question that was asked prompted the side bar, but that the Government did not object to the question.

MR. JOY: I don't know if the Government objected or not.

THE COURT: I really don't think in the total framework that you need be concerned about that issue. My feeling is that in the total flow of the case that particular matter was completely submerged. I think I prefer not to highlight it in that fashion.

(In open court.)

JON BRUCE HANSEN, called as a witness by the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MS. COTE:

Q Mr. Hansen, for whom do you work?

A New York City Police.

Q When did you join the New York City Police?

A June 10, 1965.

Q What is your title?

A Investigator.

Q Investigator Hansen, what is your present assignment?

A I am presently assigned to the New York Drug Enforcement Task Force.

Q Could you describe briefly for the jury what the purpose of the New York Drug Enforcement Task Force is?

A It's a combination of Federal officers, Federal agents, New York City officers and New York City police, working strictly narcotic investigations.

Q Are you a member of the same unit that Detectiv Minichiello was once in?

A Yes, Ma'm.

Q Were you working on April 28th of this year?

A Yes, Ma'm, I was.

Q What did you do on that afternoon?

A We initiated surveillance on The Grass Bar -- it's a bar on the upper East Side, -- prior to an arrest situation.

Q Approximately what time did you begin this surveillance?

A Approximately 1:00 P.M.

Q Can you describe your work from -- let me take you a little later in the afternoon -- from approximately three o'clock on.

A Yes, Ma'm.

At approximately three o'clock I was inside The Grass Restaurant on a surveillance.

Q Were you with anyone?

A I was with Detective Campbell.

Q Where were you located inside Grass Restaurant?

A I was seated at the bar just inside the doorway.

Q From where you were seated at the bar, could you please describe whether you saw any other individuals either on surveillance or related to this investigation?

A Initially all I could see was two other individuals that were on surveillance. They would be Detective DeRosa and Detective Mahone.

Q Where were they located?

A It's kind of a square bar. They were cater-corner at the bar to the location I was at.

Q Did there come a point during your surveillance in Grass Restaurant when you saw other individuals related to this investigation?

A Yes, Ma'm.

Q Please describe when and under what circumstances that occurred.

A Because of the structure of The Grass Restaurant, I could not see Detective Minichiello who at that time was the undercover agent. There came a time when I went to the men's room so that I could walk through the restaurant to see where everybody was.

Q When you say "because of structure of the restaurant you could not see Detective Minichiello", what specifically are you referring to?

A There were two columns that ran from the floor right to the ceiling that I could not see around without being observed.

Q Where were those columns situated with respect to where you were located and with respect to where Detective Minichiello was located?

A Between where I was and Detective Minichiello. They blocked me completely.

Q When you went to the men's room at that point in the afternoon in order to see Detective Minichiello, please describe to the jury what you saw.

A On the back wall of the bar there was a table with four people seated at it. Detective Minichiello was seated there. The informant was there, and the two subjects, Weindling and McIntyre.

Q You referred to two subjects, Weindling and McIntyre. Look around the courtroom and see if you see the individual you refer to as Weindling.

A Yes.

Q Point him out.

A Right there with the white sweater on.

MS. COTE: May the record reflect, your Honor, that he has identified the defendant Weindling.

THE COURT: It may.

Q Look around the courtroom and see if you can see the person you referred to as McIntyre.

A Right here.

MS. COTE: May the record reflect he has identified the defendant McIntyre.

THE COURT: It may.

Q Did there come a point in your surveillance that afternoon at Grass Restaurant when you made a specific observation of one of the two defendants?

A Yes, Ma'm.

Q Please tell us approximately when it was and what you saw.

A At approximately 4:35 P.M. Ms. McIntyre walked down to the rest rooms. The rest rooms are located downstairs, so you have to go downstairs.

Q Where were you situated when you saw her do this?

A I was seated at the bar.

Q From where you were at the bar, please describe your view of that staircase you have just mentioned.

A I had a complete view of the staircase, of the head of the staircase.

Q What did you notice after you saw Ms. McIntyre go down that staircase?

A Very shortly thereafter a brunette girl walked down right behind her. The girl got up from right behind where Detective DeRosa and Detective Mahone were seated and walked down behind her.

Q What happened next?

A Approximately ten minutes later Ms. McIntyre came back up and went to the table.

Q After that did you make any other observations?

A The girl who had followed her down, stayed down there. She didn't come back up. Then the arrest situation arose.

Q When you say "the arrest situation" what do you mean?

A Well, there was a signal that was supposed to be given by Detective Minichiello and at that point in time we were supposed to arrest the people at the table.

Q Where was Detective Minichiello at this time?

A When he gave the signal?

Q Yes.

A He was outside the restaurant.

Q Had you observed Detective Minichiello go outside?

A Yes, Ma'm. He had to walk past me to the outside.

Q When had he walked outside in relationship to when you saw Ms. McIntyre come back up from going downstairs?

A Approximately ten minutes after she came back up but during the time that Detective Minichiello was going by me headed for outside, Ms. McIntyre got back up and walked to the top of the stairs and down.

Q What happened at this point?

A When the arrest signal was given, I went directly to the stairs. At the top of the stairs I checked to make sure that everything was all right at the table where the arrest of the male subject was taking place.

Q Whom did you see at that table?

A I saw Detective DeRosa and he gave me a sign that he had everything under control, so I went downstairs.

Q What happened downstairs?

A When I got to the bottom of the stairs I looked and I saw Ms. McIntyre on the telephone, so I went directly to her and as I was going to her I said, "State Police, you are under arrest", and at that time she had the phone up to her ear. She hung up the phone and the money came back out as if the call was not completed, and I said, "Take your money and get right back upstairs." I accompanied her back upstairs.

Q Can you tell the jury how much time there was between the time Ms. McIntyre went downstairs on that second occasion and the time that you saw Ms. McIntyre downstairs?

A At least a couple of minutes. Two or three minutes.

Q Can you describe to the jury where that phone is in relationship to the bottom of the stairs?

A It's approximately 12 to 15 feet off to the right of the bottom of the stairs.

Q What did you do after placing Ms. McIntyre under arrest?

A We went right back upstairs. We got upstairs at the table. Detective DeRosa took her pocketbook and I turned her over to Special Agent Panessa.

MS. COTE: No further questions.

MR. JOY: Could we have a quick side bar, off the record.

(Discussion off the record.)

(In open court.)

CROSS-EXAMINATION

BY MR. ANOLIK:

Q We have never met, have we?

A No, sir.

Q I represent the defendant Weindling.

Investigator Hansen, how long have you been involved in investigating drug cases?

A Approximately eight and a half years now.

Q Does that include cocaine as well as other drugs?

A Yes, sir.

Q Are you familiar with the drug scene, so to speak, in New York City?

A Yes.

Q Did you ever act in an undercover capacity, yourself?

A Numerous times.

Q Would it be fair to say that sometimes you are a surveilling agent and sometimes you are undercover, and you change roles, is that true?

A That's correct.

Q Do you know what the purpose of the meeting that Detective Minichiello was having on the 28th of April with Mr. Weindling was?

A The purpose was the purchase of an eighth of a kilo of cocaine.

Q Can you tell me whether or not there was any conversation, if you know of your own knowledge, about any tape recording being made of this conversation?

A No,sir.

Q Is it unusual to have a tape recorder?

A It's not unusual, but it's not called for in every instance.

Q If they had used one, it would not have been unusual, would it?

A It wouldnot have been unusual.

Q It would have been discretionary as to what they wanted to do?

A Yes, sir.

Q Do you know whether or not there was any photographic surveillance besides your own visual surveillance of this incident?

A No, sir.

Q Did you see anything with respect to a drug transaction occur while you were in that room?

A I could not.

Q You could not see at all?

A I could not see the table that the people were seated at.

Q You had, I assume, a description of Ms. McIntyre prior to arriving at the scene?

A I saw both of the subjects before they walked into the restaurant.

Q So you knew who they were?

A Yes, sir.

Q Did you follow Ms. McIntyre downstairs? You said she went downstairs in some point in time.

A She went down twice.

Q Did you follow her?

A At the second time.

Q How about the first time?

A No.

Q Do you know if anybody followed her? Any agent or anyone in authority?

A I believe Detective DeRosa followed her. I'm not sure.

Q In other words, you have no independent recollection of that?

A No, sir.

Q When you say Detective DeRosa, was he part of the surveillance team?

A Yes, sir, he was.

Q Can you tell me this: At the time that Ms. McIntyre was arrested you were present, is that correct?

A Yes, sir.

Q From that period of time on can you tell me whether or not anybody took anything away from her who was not a detective or police officer?

A From the time she was arrested? No, sir.

Q In other words, she was in legal custody and the only one who dealt with her were people who were authorized to do so because they were detectives or investigators, is that correct?

A That's correct.

Q Did you conduct a search?

A A search?

Q Yes.

A Yes, sir.

Q Of what?

A Of the restaurant.

Q Did you find any drugs in the restaurant?

A No, sir.

Q More particularly did you find three and a half ounces of cocaine in the restaurant?

A No, sir.

Q Do you know what the price, the going price, for cocaine was on the 28th of April 1977?

A In what amount?

Q In the amount of an eighth of a ki.

A A ball park figure, say from -- depending on the quality of it now -- twenty-five to -- $16,000, if you are talking pharmaceutical.

Q Twenty-five hundred on up?

A Yes.

Q Is there any difference between the quality, purity, of cocaine, depending on whether you are a user or a dealer or a wholesaler or something of that sort? Would the quality be different?

A Normally, but not in all circumstances, no.

Q I mean if a fellow were going to use the cocaine for himself, would it have a certain concentration?

A As I say normally, but not in all circumstances. I know of one guy who imports cocaine who was arrested and he had a kilo right from South America, and it was a half a per cent.

Q You are not talking about Mr. Weindling?

A No, not at all.

Q Do you have any idea of what the chemical analysis of the cocaine in the samples that were obtained in this case were?

MS. COTE: Objection, your Honor.

MR. ANOLIK: If he knows.

THE COURT: Proceed.

Q Were you present during any chemical analysis of the cocaine?

A No, sir.

Q Did you ever read what the chemical analysis was?

A No, sir.

Q You have no independent knowledge of what it was?

A No, sir, I don't.

Q Did you make a report of your surveillance and the arrest and search?

A No.

Q None whatsoever?

A No.

Q I show you 3505A. Is this a report you made?

A No, sir. It does not say anything.

Q Were you present on the 27th of April 1977 at any location in connection with this case?

A No, sir.

Q The first time you were assigned to it was the 28th?

A That's correct.

Q Do you know who effectuated the arrest of Officer Minichiello, the pretended arrest?

A No, I don't.

Q Do you know whether he was arrested?

A No, I don't.

MR. ANOLIK: I have no further questions of this witness.

THE COURT: Mr. Joy?

CROSS-EXAMINATION

BY MR. JOY:

Q Investigator Hansen, when were you assigned to this operation involving Moses Weindling?

A One o'clock on the 28th.

Q Did you have a meeting at that time?

A No. No.

Q Who gave you your assignment for that day?

A We were advised -- I was advised on the air via radio to go up to that location.

Q When you arrived at that location, did you meet with any of the other agents that were in surveillance there?

A No,sir.

Q You indicated you had a partner, is that right?

A Yes, sir.

Q That's Mr. Campbell?

A That's correct.

Q Was this in a radio car you were in?

A Yes, sir.

Q The instructions you received were over the radio, is that right?

A That's correct.

Q Did those instructions tell you where you were to go and what you were to do?

A Yes, sir.

Q Do you know the individual that you spoke to on the radio?

A No, sir.

Q Do you know who was in charge of this operation?

A It would have been Sergeant Crusi.

Q Sergeant Crusi?

A He's the group supervisor.

Q Is there someone who is in charge in the field?

A Special Agent Manessa.

Q Was he present at The Grass Restaurant on the 28th?

A Yes,sir, he was.

Q Was he one of the persons seated at the bar?

A No.

Q You indicated there were four agents seated at the bar, is that correct?

A That's correct.

Q They included yourself, Mr. Campbell and who else?

A Detective DeRosa and Detective Mahone.

Q Did you receive a description of the two defendants in this case?

A No, sir.

Q How many people were in The Grass Restaurant that afternoon?

A All told?

Q Yes.

A Maybe 20.

Q Twenty people?

A Approximately.

Q What time did you get there?

A Three o'clock. Approximately 3:00 P.M.

Q When you arrived at three o'clock were other agents seated at the bar?

A No. Not when I initially came in they were not.

Q Did you have a discussion with anybody when you arrived?

A You asked me what time I got inside the restaurant. I got inside the restaurant at three o'clock. I didn't have any discussion with anybody other than Detective Campbell.

Q And he was in the car with you when you got the radio?

A Yes.

Q So other than the communication you received in the car that was the only thing that you knew about this case, is that right?

A That's correct.

Q The person in the car that you heard from was who?

A I heard it on the radio.

Q Who was it, do you know?

A That directed me on the radio? No, sir. It would have come through base.

Q You didn't know the name of the person you were speaking to. Was it a two-way conversation?

A Yes, it was two-way, "Go to The Grass and set up on surveillance".

Q Tell me this: In the Task Force are there any female agents?

A Now there is, yes,sir.

Q Were there any in April 27 or 28th of this year?

A No, sir, there were not.

Q There are no female agents in the Drug Enforcement Agency?

A I cannot tell you that. I don't know.

Q When you arrived in the bar area, that was about three o'clock, is that right?

A Yes, sir.

Q You sat down at the bar, is that correct?

A That's correct.

Q And ordered a drink?

A Yes, sir.

Q What could you see from where you were located at the bar?

A I could see Detective DeRosa, Detective Mahone, and two females seated directly behind them at a table.

Q Two females?

A Yes, sir.

Q Could you see either Mr.Weindling or Ms. McIntyre?

A No, sir, I could not.

Q How long did you sit at the bar?

A Until I went up to go to the men's room to get a look where everybody was in the bar, ten minutes, fifteen minutes maybe.

Q You sat in the bar ten or fifteen minutes and then you went to the men's room?

A That's correct.

Q To go to the men's room you go down the same stairs that you go down to to the ladies' room?

A That's correct.

Q When you did that, what did you see?

A I saw Detective Minichiello, the informant, Mr. Weindling and Ms. McIntyre seated at a table.

Q When they were seated there, the room was filled with diners, was it not?

A No, sir. It was not filled. There was a few other people in there.

Q There were a few other people. As a matter of fact, there were people sitting right next to the table that Weindling and McIntyre were at, is that correct?

A I don't recall if anybody was seated next to them.

Q After you went to the men's room you came back to the bar?

A Yes.

Q Did you sit down in the same seat?

A Yes, I did.

Q From where you were seated at the bar, could you see the stairs going down to the men's and ladies' room?

A Yes, sir, I could.

Q Did you look at who was going down and coming up from the ladies' and men's room?

A Yes, sir.

Q How many people did you see go down and how many people did you see come up from the men's and ladies' room?

A In all the time I was in there not too many. Two or three.

Q Two or three went down and came up, is that right?

A That's correct.

Q Did you make a note of who went down and who came up?

A Yes, sir.

Q You made some notes while you were --

A No, no. A mental note, yes.

Q How long did you observe the people going up and down the men's room steps?

A Approximately an hour and a half, an hour and forty-five minutes.

Q Did anybody instruct you to watch the people coming up and down from the men's and ladies' room?

A No, sir.

Q During that hour and thirty-five minutes you say approximately two or three people went down and up, to and from the ladies' room?

A Yes.

Q Were they male, female, or both?

A Yes.

Q Occasionally you would see people go down together or at least one after another, is that correct?

A No, sir.

Q Is it your testimony that the only two people that you saw going down somewhat together were Ms. McIntyre and some brunette?

A That's correct.

Q During an hour and a half?

A Yes, sir.

Q After you saw Ms. McIntyre and this other person go down the stairs, did you see anybody else go either down or up the stairs?

A Yes, sir.

Q How many people?

A Two more.

Q Did you see Ms. McIntyre come up?

A Yes, sir, I did.

Q After she came up then you lost sight of her when she sat down again at the table?

A That's correct.

Q And there came a time when you went downstairs, is that right?

A Yes, sir.

Q When was that?

A As I say, approximately ten or fifteen minutes after I went into the place. That would be 3:15 P.M.

Q This was one time you went down to the men's room?

A Yes.

Q The next time you went down was when there was an arrest, is that right, when there was the arrest scene?

A That's correct.

Q Where were you when you learned that an arrest was to be made?

A Right at the bar.

Q Had you ever met Detective Minichiello before?

A Yes, sir, he worked with me.

Q But you had not seen him before that day other than sitting at the table?

A I saw him go into the bar originally and I saw him seated at the table that particular day.

Q When did you see him go into the bar?

A When I set up on surveillance at the bar at 1:00 P.M.

Q You were at the bar at 1:00 P.M.?

A Outside the bar.

Q You saw him go in?

A Yes.

Q How long were you outside the bar?

A From one o'clock on.

Q Until when?

A At three o'clock I went into the bar.

Q You were outside the rest of time?

A Yes,sir.

Q Were you on the street, standing on the street?

A No, sir.

Q You were in your car?

A Yes, sir.

THE COURT: Mr. Joy, have we come to a good stopping place?

MR. JOY: I have more things. If I could stop now I would appreciate it.

THE COURT: You have a few minutes more examination?

MR. JOY: Yes.

THE COURT: We will recess for the night, ladies and gentlemen.

Ten o'clock in the morning.

Continue to keep an open mind. Do not discuss the case amongst each other or with anyone.

Good night.

(Adjourned to October 27, 1977, at 10:00 A.M.)

United States of America

vs.

77 Cr. 472

Moses Weindling and
Patricia McIntyre,
Defendants.

New York, New York.
October 27, 1977- 10:10 A.M.

(Trial resumed.)

(In open court.)

MR. JOY: Your Honor, this concerns with my cross-examination of this witness; I would like to have the witness draw a representation of what the interior, what he believed the interior, of the Grass Restaurant looked like at the time that he is testifying about.

In that connection I have drawn a schematic drawing on the board which I would like to ask the witness to go down to and make whatever changes he thinks are necessary in showing the interior of the restaurant, and also to indicate on that where he was sitting,where the table where the defendants were sitting was, and other important portions of his testimony.

The alternative I suppose is to have him come down and draw it freehand himself, but what I propose to ask him is to come down and ask him to make whatever changes in that diagram are necessary.

THE COURT: I don't like that. That suggests to the jury that you are correct and he is incorrect, and therefore he's being asked to change something that somebody has urged as accurate.

MR. JOY: We could cover that point by having the witness make whatever changes he thinks are necessary to make it accurate so the jury is not misled into thinking I am accurate and he is inaccurate.

THE COURT: What does the Government say to that?

MR. BELLER: When we started out there were some additional things on the drawing which were in error.

It seems that the fairer procedure -- we don't know whether this witness is an artist or has any ability -- he will be putting circles and marks on this diagram which is already before the jury. It seems the way the Government ordinarily does this, it prepares a chart, shows it to the witness in advance and it gets marked up and then when we come to court he identifies it. It seems rather unfair and adds an air of the dramatic to have the witness marking up something in front of the jury. It seems a little unfair both to the Government and to the witness to be doing this.

Mr. Joy knows what the restaurant looks like.

Why doesn't he prepare an accurate-to-scale drawing on a piece of paper which he can show to the witness at a certain time. He can ask whether it fairly represents the restaurant as it looked at that time. If the witness says yes, it can come in evidence. This drawing that is half up there -- Mr. Joy is not sure if the number of stools is correct.

It is simply just an unfair way of doing what should be a relatively simple matter.

MR. JOY: On that point, your Honor, I think the witness has given a description in words as to where he was and what he was doing, and I think it would be a great help to the jury to have some idea of what is going on.

I have no wish to put words in the witness' mouth if he can come down before the jury comes in and make whatever changes he wants in a schematic drawing; I don't think there is any requirement that it has to be drawn to scale. It can be stated specifically that is not in scale and it is to give the jury just an idea of the general layout of the interior of the restaurant on that day.

MR. BELLER: We are not saying it would not be helpful to have the chart --

THE COURT: I understand.

Mr. Joy, I will tell you what I am going to do. You don't have a scale drawing and you don't have any assurance that that inside is either to scale or you have the tables in the right place, or the chairs or anything else. I will let you make the intersection of 75th Street and First Avenue and you can have the witness do it from there on his own.

MR. JOY: Very well. I wanted to save time.

THE COURT: I feel that inferences may be drawn from what happens from there that have nothing to do with the case. It has to do with the man's ability as an artist or his argument with you as an artist.

MR. JOY: You want me to erase the outline --

THE COURT: Of the interior. Leave 75th Street and First Avenue and the door and everything else, and let him go from there.

MS. COTE: Does Mr. Joy have a camera here to preserve this evidence if it should come in?

MR. JOY: If necessary I will have someone by the end of the day come and take a picture of it.

THE COURT: Please do that. That's standard procedure.

JON BRUCE HANSEN resumed.

(Jury present: 10:25 A.M.)

THE COURT: Good morning, ladies and gentlemen. Proceed.

CROSS-EXAMINATION (continued)

BY MR. JOY:

Q Investigator Hansen, I ask you to go down to the blackboard on which is depicted First Avenue and 75th Street. Would you draw, as best as you can, a diagram, not necessarily to scale, of what the interior of the Grass Restaurant looked like on April 28, 1977.

(Witness complies.)

THE COURT: Mr. Hansen, keep in mind that for some reason people looking at a map of New York going up and down, this happens to be put in sideways. Keep in mind that First Avenue apparently is going north to the left.

THE WITNESS: Yes, sir.

THE COURT: North is to the right in this particular picture.

(Pause.)

A That's the best to my knowledge right now.

Q Is this the bar area, the square?

A It's a square bar.

Q I take it the squares that are around the bar are bar stools?

A These are, yes, sir.

Q These are pillars?

A That's correct.

Q Could we write "P" for pillar inside those.

A Yes.

Q These two squares are pillars also?

A That's correct.

Q Could you indicate where Mr.Weindling and Ms. McIntyre were seated on the 28th of April?

A They were at this table. Do you want their exact location?

Q Yes, if you could give it.

A Ms. McIntyre was here and Weindling was here.

Q Where was Steven?

A Right here.

Q And Minichiello?

A Minichiello was right here.

Q Where were you at the bar?

A Right here.

Q You indicated there were three other officers, agents, at the bar also, is that right?

A That's correct.

Q Where were they?

A Detective Campbell was here, Detective DeRosa was here and Detective Mahone was here.

Q Maybe we can put initials.

A All right.

Q You have indicated an area up here. Tell us what that is.

A The stairs.

Q Those are the stairs that go down to the men's and ladies' room?

A Yes.

THE COURT: Which way is "down"?

THE WITNESS: This way.

Q So that in order to go down you have to go up into the corner and down the stairs, is that right?

A That's correct.

MR. JOY: You may resume the witness chair.

(Pause.)

Q Am I correct that you testified that you were outside in a car from one o'clock to three o'clock, is that right?

A That's correct.

Q Where were you parked?

A On First Avenue south of this location.

Q Did anybody tell you to go into the restaurant?

A Yes, sir.

Q Who told you to go into the restaurant?

A Special Agent Panessa.

Q What kind of day was it, do you remember? Was it raining?

A No, it was not raining.

Q The squares that you have in this area just above the First Avenue writing, those are a representation of tables in the portion of the restaurant that is out over the sidewalk, is that right?

A That's correct.

Q I take it that the number of tables that you have put in there is not necessarily the correct number of tables, it is a schematic as far as that is concerned?

A Yes.

Q That I take it also for the tables you have in the interior. There are more tables than the one you have put in?

A There is more than one table in there, yes.

MS. COTE: Could you have the witness indicate what he has tried to depict as tables in the interior of the restaurant so there is no confusion about that.

Q Would you indicate what you have indicated as tables?

A These are tables, these are tables, and these are tables also.

Q And there is also a table right next to the table where they were seated?

A There is a table here, yes, sir.

Q Could you draw that there too?

A I will, yes.

(Pause.)

Q You indicated you went to the men's room at some time after you arrived inside the restaurant, is that right?

A That's correct.

Q Do you know about what time that was?

A Approximately 3:15 P.M.

Q You indicated that you went to the men's room so you could see where people were seated, is that right?

A That's correct.

Q When you went to the men's room, what other agents did you see at that t[illegible] other than the three that were still seated at the ba[illegible]

A Detective Minichiello.

Q He was the only one?

A Yes, sir.

Q At what time did Patty McIntyre go to the ladies' room?

A The first time?

Q What time did you see her go down the stairs?

A Approximately 4:30, 4:35 P.M.

Q That was the first time?

A Yes, sir.

Q How long was she down there?

A Approximately ten minutes.

Q Then you saw her come up the stairs, is that right?

A Yes, sir.

Q Did she walk over to the area of the table that you have indicated?

A Yes, sir.

Q You were still seated in the same seat that you have indicated on the chart, is that right?

A Yes, sir.

Q So that she was not visible to you when she was sitting down, is that right?

A That's correct.

Q In other words, your view was marred by the pillar which you have marked in that diagram?

A That's correct.

Q Did you notice the waitress bringing over a bill to that table?

A No, sir.

Q How long after Patty arrived up at the table did Minichiello leave?

A Approximately ten, fifteen minutes.

Q Later?

A Yes, sir.

Q What path out of the restaurant did he take?

A Past me.

Q Referring to the diagram, he walked past the bottom portion of the bar, is that right, on the street side of the bar, is that correct?

A That's correct.

Q Did he go out the door?

A Yes, he did.

Q When did you get the signal to make an arrest?

A A short time after he went out the door.

Q Who gave you the signal to make the arrest?

A Detective DeRosa.

Q Detective DeRosa was where?

A Seated at the bar -- standing at the bar at that time.

Q Is that the "D" that you have marked opposite the stool?

A Yes, sir.

Q At that time where was Minichiello?

A Outside the restaurant.

Q How did DeRosa give you the signal to make an arrest?

MS. COTE: Objection, your Honor.

THE COURT: What is the ground for it?

MS. COTE: It is customary practice for the agents and officers in the Task Force to not make public the signals --

MR. JOY: I object to that.

MR. ANOLIK: She is testifying. I don't know whether that is the truth or not.

THE COURT: Come to the side bar.

(At the side bar.)

THE COURT: How does this bear on the case?

MR. JOY: It bears on why they made the arrest and when they made it.

THE COURT: No, no.

MR. ANOLIK: It is credibility.

THE COURT: Everybody agrees that everybody got arrested. Somebody had to give the signal. What difference?

MR. JOY: DeRosa had to give a signal based on --

MR. ANOLIK: The point is this: Another detective who testified may give a different answer to it. That's the only point.

THE COURT: I know, Mr. Anolik, but somebody gave the signal.

MR. ANOLIK: I am not being argumentative. I think you are quite correct, but the point is that if that is the case, why ask any preliminaries at all?

THE COURT: Please.

MR. ANOLIK: I think this may be important in the sense of determining --

THE COURT: I don't know why I am listening to you. You didn't ask the question.

I am perfectly prepared to order it if you have a reasonable basis for asking it given the Government's objection.

But where everybody agrees there had to be some kind of signal, why you are pressing for the exact nature of the signal, I really don't understand. If you can tell me why it has an effect upon your case, I will consider it.

MR. JOY: As a result of something happening after Minichiello left the restaurant there is testimony that this officer went downstairs and placed my client under arrest. What I want to know, who gave him -- he says DeRosa gave him the signal. I want to know how he gave it because it is all happening as this fellow walked out the door. If he just went down on his own --

THE COURT: He says he got a signal.

MS. COTE: I think his question goes to the source why DeRosa gave the signal.

MR.JOY: As Mr. Anolik has correctly said, the next officer who testifies may give an entirely different statement. I think it bears on the credibility of this witness. If another witness says one kind of signal and this witness says one kind, that's something we are entitled to bring out. It's a vital part of the case. If the agents disagree --

THE COURT: I don't regard it as a vital part of the case. If you insist on it, I will permit you to get an answer. I don't think you need it for your case. I make that observation.

MR. BELLER: While you are here, I will tell you what happens. When Minichiello goes outside he does something. DeRosa saw it and then his, Hansen's, back is to the outside so he gets some sort of sign from DeRosa. Would you try as best as you can to lead in such a way to ask --

MR. JOY: All right.

MR. BELLER: What Minichiello did is not very important.

MR. JOY: There is some kind of signal through the window from the outside.

MR. BELLER: If you can lead him in such a way -- that would solve our problem.

(In open court.)

Q Investigator Hansen, am I correct that when Minichiello got outside there was a signal given to somebody inside the restaurant?

A That's correct.

Q This was a visual signal?

A Yes, sir.

Q It was through the window of the restaurant, the front glass section of the restaurant?

A Yes, sir.

Q Was this signal visible to you?

A No, sir.

Q You indicated that Officer DeRosa then told you to do something, is that right?

A That's correct.

Q What did he tell you to do?

A The exact words were "Tony gave the signal, let's go".

Q At that point what did you do?

A I went to the stairs.

Q Am I correct that Minichiello walked out, came around the front, and gave a signal that was seen by DeRosa?

A No, sir. He didn't go around the front. He stayed at the doorway.

Q He stayed at the doorway and signaled back?

A Yes.

Q In other words, he was approximately here and he signaled back?

A No, sir. He was in the street.

Q Where in the street was he?

A On 75th Street directly in front of the doorway to the place.

Q In other words, he was out on the sidewalk of 75th Street and he signaled back this way, is that right?

A That's correct.

Q He gave that signal as soon as he reached 75th Street, is that right?

A I don't know. I was not watching him. I was watching Ms. McIntyre.

Q You saw Minichiello walk past you, did you not?

A Yes, sir, I did.

Q The signal came, I take it, approximately the length of time that it took him to walk from where he passed you out to the street, isn't that right?

A I don't know how long he was out in the street before he gave it. As I say, I was not watching him. I was watching Ms. McIntyre.

Q Was he out there five minutes?

A No.

Q It was a matter of seconds?

A A matter of minutes.

Q Minutes?

A Minutes. A minute.

Q When Minichiello left what were you observing, what were you looking at, as he walked past you?

A I was looking at him as he went past me.

Q As he went past you, and did you follow him with your eyes as he went out the door?

A Just about to the doorway.

Q Then you turned, is that right?

A That's correct.

Q What did you see, if anything, when you turned?

A I could see Ms. McIntyre going to the stairs, the top of the stairs.

Q After that point when you heard "let's go" you then went after her down the stairs, is that right?

A That's correct.

Q Did any other officer go with you down the stairs?

A No, sir.

Q What did you see Officer DeRosa do?

A He started towards the table that everyone was seated at.

Q How about the officer next to him, Officer who?

A Detective Mahone.

Q He went there also?

A I believe so, yes, sir.

Q Was there a certain amount of confusion? Everybody took off at one time?

A Yes, sir.

Q When you got downstairs you found Patty McIntyre at the phone, did you not?

A Yes, sir.

Q At that time you placed her under arrest, is that right?

A That's correct.

Q Did you search her bag?

A No, sir.

Q Did you ask her any questions?

A No, sir.

Q Did you make any notes regarding this incident?

A No, sir.

Q Did you contribute in any way to the reports of any other officer?

A Orally I may have contributed, yes, sir.

Q Did you read their reports after they had prepared them?

A Yes, I read them.

Q Did you see anything of yours that was contained therein?

A Just that I made the arrest.

Q There were no details contained in those reports as to the actions that you had taken?

A No, sir.

Q After you arrested Ms. McIntyre downstairs what did you do then?

A Immediately proceeded back upstairs.

Q With her?

A Yes, sir.

Q When you got upstairs where was the defendant Weindling at that time?

A I believe he was being taken out to the car at that time, to a car.

Q Did you ever search Ms. McIntyre's bag?

A No, sir.

Q Were you present when another officer searched her bag?

A I was present when another officer looked in it, yes, sir.

Q What officer looked in it?

A Detective DeRosa.

Q Where was that?

A Upstairs in the restaurant immediately after I brought her upstairs.

Q After you brought her upstairs then did you leave the restaurant?

A Not immediately, no, sir.

Q Ms. McIntyre told you why she was calling, did she not?

A Excuse me?

Q She told you who she was calling on the phone, did she not?

A No, she did not.

Q How long, Investigator, have you been involved in the apprehension of narcotic violaters?

A Approximately eight and a half years now.

Q You have made a number of cocaine arrests?

A Yes, sir.

Q In some of those you were acting as an undercover officer, is that right?

A That's true.

Q In some of those, some of the buys you made, were sometimes in apartments or non-public places?

A That's true.

Q Did you occasionally in the line of duty ever snort any of the cocaine that you were attempting to buy?

A No, sir.

MR. JOY: I have no further questions.

THE COURT: Mr. Anolik?

MR. ANOLIK: No, thank you, your Honor.

THE COURT: Any redirect?

MR. ANOLIK: I wonder if you can point out to the jury that that is not evidence.

THE COURT: It is evidence.

MR. ANOLIK: Is it going to be preserved?

THE COURT: Yes.

MR. ANOLIK: I didn't know it had a number.

THE COURT: It will have a number when we have a picture.

MS. COTE: At this point the Government will offer that exhibit as Government Exhibit 4 in evidence.

THE COURT: There will be a picture of it and it will go in evidence at that time. Is there any objection to it going in as Government Exhibit 4?

MR. ANOLIK: No objection.

MR. JOY: No objection.

REDIRECT EXAMINATION

BY MS. COTE:

Q It is a crime to snort cocaine, isn't it?

A Yes.

Q Yesterday I believe Mr. Anolik asked you a question regarding a search you made of Grass Restaurant.

A Yes, Ma'm.

Q Could you describe the circumstances under which you searched Grass Restaurant?

A We searched --I searched Grass Restaurant after we found out, I found out, that there was no package,there was no cocaine.

Q When did you find out that no package of cocaine had been seized?

A After I had gotten back to 57th Street.

Q So approximately how much time was there between your search of Grass Restaurant and the time the defendants were arrested at Grass Restaurant?

A Approximately forty-five minutes to an hour.

Q When you say that no package of cocaine had been seized, what do you mean by a package?

A That a phrase. The cocaine that we were attempting to purchase, we just didn't have it.

MS. COTE: No further questions.

RECROSS-EXAMINATION

BY MR. ANOLIK:

Q Mr. Hansen, was there an agent in charge at the time that this arrest took place?

MS. COTE: Objection, your Honor.

THE COURT: Yes.

MR. ANOLIK: I have a reason for it. It bears on the last questions asked.

THE COURT: Overruled.

Q Was there an agent in charge at the time of this arrest?

A Yes.

Q Who was that?

A Special Agent Panessa.

Q Is it your testimony that he did not divulge to you at the scene of the arrest that the "package" had not been uncovered?

A That's correct.

Q He never told you at all that the whole purpose of this surveillance and whatnot, to find a package, namely an eighth of a ki or slightly less of cocaine, had not been discovered?

A No.

Q You were not told or no one in your hearing was told, "Hey, fellows, you better look around because we didn't get the package"?

A Not until a later time that we found out there was no package.

Q Who was it that told you for the first time that the package had not been found?

A Special Agent Sandler.

Q Was he at the scene of the arrest?

A Yes.

Q Where was he positioned?

A He was not inside the restaurant.

Q He was outside the restaurant?

A Yes, sir.

Q Can you tell me what is done,tell the jury, when contraband is seized at the scene of an arrest? May I explain what I mean by "contraband" -- I mean cocaine or something of that sort.

A You physically take possession of it and bring it back to the office and process it, put it into evidence, put it in an evidence bag which is a plastic bag that is sealed, and you submit it to the laboratory for analysis.

Q Wouldn't that be the arresting officer who would do that, the man who so-called made the arrest?

A Not necessarily.

Q Tell me what the procedure would be.

A Normal procedure is that someone is assigned to be in charge of the evidence.

Q In this case who was assigned to be in charge of the evidence?

A I don't know.

Q If you had known at the scene that the package had not been found would you have then continued a search immediately?

A Yes, sir.

Q So would it be fair to say that nobody knew that the package had not been found until about three-quarters of an hour later?

A Yes, that would be fair to say.

Q Is it possible that nobody knew what they were looking for in the first place?

A No.

MS. COTE: Objection, your Honor.

THE COURT: Strike out the answer. Anything in the world is possible.

MR. ANOLIK: I will rephrase it.

Q Had you received any information from inichiello or someone else prior to your arrest of Ms. McIntyre -- I believe you said you arrested her -- as to what the agents were to look for?

A Yes, sir.

Q What were you told?

A I knew that we were supposed to buy an eighth of a kilo of cocaine.

Q When you say we were supposed to buy, you mean the undercover agent?

A The group itself, the undercover agent.

Q From that point of view were you also told when the signal came from DeRosa where the alleged cocaine was located?

A No, sir.

Q He didn't say to you, "Hansen, it's in the bag", or something like that?

A No, sir.

Q So you just made an arrest?

A Yes, sir.

Q You are an experienced police officer. You had no warrant to make an arrest in the sense of a written warrant, isn't that correct?

A That's correct.

Q This arrest of Ms. McIntyre was being made on instructions, isn't that true?

A Yes, sir.

Q When you made the arrest, did you at that time secure all her property? You said you didn't look at her property, but did you secure her property in the sense of taking it away from her?

A No, sir. I didn't take it away from her.

Q Let me ask you this: When you make an arrest, isn't it necessary to preserve everything that the defendant or the arrestee has in his or her possession?

A That's right.

Q You would not permit her to throw anything away?

A No, sir.

Q You did keep an eye on her from that point of view?

A Yes.

Q You would not have permitted someone to approach her and give her something or take something?

A That's correct.

Q Would it be fair to say then that your recollection is that nothing was given to her nor taken away from her until you turned her over to DeRosa who, you said, then looked through her pocketbook?

A Yes.

Q Were you present physically when DeRosa actively looked into the pocketbook?

A Yes.

Q Did you peek into it too?

A No.

Q Did DeRosa say anything to you that there was nothing in it or anything to that effect?

A No.

Q You have no recollection of any conversation he made at that particular time?

A No, sir.

Q How did you physically go back to 57th Street, and with whom?

A I went back with Special Agent Sandler in Mr. Weindling's Triumph car.

Q That's a pretty small car, isn't it?

A Yes.

Q How many people were in it?

A Two.

Q Not Mr. Weindling too?

A I said in Mr.Weindling's car.

Q By the way, let me ask you this: Was that car searched as well?

A At the office it was searched, yes, sir.

Q Who has that car now, do you know?

A I believe it is still in the Federal Government's possession.

Q I'm just trying to get at the point in time at which someone said, "Hey, where is the narcotics?" Would you detail to the jury at what point in time it suddenly became obvious or someone realized that you didn't have any narcotics?

MS. COTE: Objection, your Honor. That is extremely repetitive.

THE COURT: Overruled.

Q Describe that to the best of your recollection. How did it come about that suddenly that occurred to somebody?

A When we were back at the office -- when I was back at the office I found out we did not have the narcotics.

Q Who told you?

A Special Agent Sandler.

Q What did he say to you?

A He said, "We have not got the package".

Q He was in the car with you, wasn't he? Didn't he say something to you at that time?

A No, sir.

Q Do you know how he found out he didn't have the package?

A I believe it was from a telephone conversation.

Q With whom?

A I don't know who.

MS. COTE: Objection.

THE COURT: Overruled.

A I don't know who he was talking to.

Q You really have given us all the recollection you have, is that correct?

A Yes, sir.

Q And it was he who told you to go back and search, is that correct, if you remember?

A I believe it was Special Agent Sandler.

Q Did you go back with anybody?

A I went with Detective DeRosa and Detective Campbell.

Q Would you just describe what physically you did in searching?

A Looked upstairs by the table; downstairs by the telephones; got assistance from one of the waitresses there and went in and checked the bathroom, the ladies' room, checked outside. Generally the whole lower floor. There was another group of guys searching upstairs.

Q Did you ever speak to Detective Minichiello when you got back to 57th Street about the arrest?

A No, sir.

Q Would it be fair to say that following your search you found no contraband?

A Yes, sir.

Q When you say "yes, sir," yes, you found no contraband?

THE COURT: It would be fair to say he found no contraband.

MR. ANOLIK: Thank you, your Honor.

THE COURT: Anything further?

MS. COTE: No further questions.

THE COURT: Thank you very much.

(Witness excused.)

MS. COTE: The Government calls Officer DeRosa.

JOHN DeROSA, called as a witness by the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MS. COTE:

Q By whom are you employed, sir?

A The New York City Police Department.

Q For how long have you been a member of the Police Department?

A Approximately twelve and a half years.

Q What position do you hold in the Department?

A Detective investigator.

Q Where are you presently assigned?

A The New York Drug Enforcement Task Force.

Q How long have you been with the Task Force?

A Five and a half years.

Q Were you working on April 28th of this year?

A Yes, I was.

Q What did you do on the afternoon of that day?

A I entered The Grass Restaurant at 1445 First Avenue.

Q What was the purpose of entering that restaurant on that afternoon?

A I was a surveillance officer to make observations on a narcotics transaction.

Q Approximately what time did you enter the restaurant?

A Approximately 1:30 in the afternoon.

Q Where did you go inside that restaurant?

A I sat at a table with Detective Ernest Mahone on the north side of the bar towards the rear of the restaurant.

Q Did you keep that position during the entire time you were in Grass that afternoon?

A No, I did not.

Q Can you tell us where else you stationed yourself while you were in Grass that afternoon?

A Yes, sir. At the bar, which was also at the north side of the restaurant towards the rear.

Q At the time you entered Grass were any other agents or officers of the Task Force in Grass Restaurant?

A No, they were not.

Q Did there come a time when other officers or agents also entered Grass Restaurant?

A Yes.

Q Could you tell us who they were?

A Yes. Detective Daly, Special Agent Panessa, and Special Agent Sandler.

Q Did you see where they stationed themselves within Grass?

A Yes, I did.

Q Where was that?

A They were at the table at the northeast corner of the restaurant in the main part of the dining-room.

Q At this point I am going to ask you to step down and look at a drawing on this blackboard. I would like you to point out to the jury some of the things you have just described in your testimony.

First of all, where was the table you were initially sitting at in Grass Restaurant?

A This one right here.

Q Where, when you moved to the bar, were you eventuall stationing yourself?

A At this stool or chair right here.

Q When you said that Special Agent Sandler and two others of the Task Force went to a table, where was that table, if it is on the diagram?

A Yes. Their table was right here.

Q If you could remain there for a moment: How long were those three agents and officers in that corner table in Grass Restaurant, if you know?

A I would say approximately forty-five minutes to an hour.

Q During the time that they were in there, did you happen to notice if any other people stationed themselves that you recognized or were familiar with at a location near them?

A Yes.

Q Where was that location?

A Right here.

Q Who were the people that you recognized situating themselves at that location?

A Detective Minichiello, the informant, and later on Moses Weindling and Patricia McIntyre.

Q So Mr. Weindling and Ms. McIntyre arrived at a different time than Detective Minichiello and the informant?

A Yes, that's correct.

Q When you say "Mr. Weindling", I would like you to look around the courtroom and see if you recognize the person you describe as Mr.Weindling.

A The gentleman sitting at the corner of the table --

MR. ANOLIK: We concede.

MS. COTE: I would like the record to reflect the identification was conceded after it was made.

MR. ANOLIK: Your Honor, I cannot do it beforehand.

THE COURT: The record will show the identification.

Q Look around the courtroom and see if you can recognize the person whom you describe as Ms. McIntyre?

A The young lady with the blonde hair and red, white and blue stripes.

MR. JOY: I will concede that identification as well.

MS. COTE: Simply note on the record it was conceded after identification was made.

Q Were there any other officers or agents in Grass Restaurant during the course of the afternoon?

A Yes, there was.

Q Who were they?

A Investigator Hansen and Detective Campbell.

Q Point out to the jury where they were stationed.

A These two stools or chairs right here.

Q You have described and pointed out to the jury in fact your location at the bar and the location also of the table at which Ms. McIntyre and Mr. Weindling, Detective Minichiello and the informant were. Were you able from your position at the bar to have that table under your observation during the course of that afternoon?

A Not the entire table, no.

Q Could you please explain to the jury what you could see and how you could see it?

A Yes. I could see the chair where Ms. McIntyre was sitting and part of Mr.Weindling, but from the reflection in the mirror on the pillar I could see the entire table.

Q So you are telling the jury you could see directly the two defendants, but you couldn't see the rest of the table directly?

A That's correct.

Q You mentioned that you saw the rest of the table through a reflection in the pillar?

A Yes.

Q Please describe the pillar.

A Would you like me to point to it?

Q Point it out and describe how it would give you a reflection of the table.

A This pillar right here has mirrors, one on this side here, one -- I don't know if there is one in the rear, but there is a mirror right here on this side of the pillar and I could see the reflection of the table.

Q From that reflection you were able to see the entire table?

A That's correct.

Q Could you please relate to the jury the observations you made of the activities of the two defendants during the course of that afternoon?

MR. ANOLIK: May we fix a time?

THE COURT: I think it will be fixed as we go along.

Proceed.

A At approximately 2:35, 2:40 P.M. I observed Mr. Weindling and Ms. McIntyre enter the restaurant and sit at the table along with the Detective Minichiello and the informant.

At approximately 4:30 P.M. I observed Ms. McIntyre leave the table and walk to the stairs and enter the basement of the restaurant.

Q Could you point out those stairs on the diagram, please?

A Yes, right here.

Q Did you make any other observations at this point?

A Of the defendants?

Q Or of any other people relative to the defendants' actions.

A Yes. Just before Ms. McIntyre left the table, a female that was seated at the table almost directly next to me, got up from her table and took the stairs down to the basement of the restaurant. Approximately a minute later Ms. McIntyre got up from her table, took the same stairs down to the basement.

About three or four minutes later the female came up, sat back down at her table and a younger female that was accompanying her took the stairs down to the basement of the restaurant.

Q Could you point out for the jury the table at which those two women you have just described for the first time were sitting?

A Yes. At this table rigt here.

Q Take a piece of chalk and mark that with a large "A".

(Witness complies.)

Q You put two A's on the diagram. Why is that?

A There were two females. An older one and a younger one.

Q You said the younger one went downstairs some time after Ms. McIntyre went down, is that correct?

A After the older one had come back to the table, the younger girl then went downstairs.

Q Where was Ms. McIntyre?

A She was still downstairs.

Q Can you describe that younger woman who went downstairs?

A Yes, she was about five, six, five, seven, approximately 120, maybe 125 pounds, long brown hair, wearing a lot of jewelry, very attractive girl.

Q What did you next notice after you saw that young brown-haired woman descend the stairs?

A About three or four minutes later Ms. McIntyre came up and took her seat again at the table with Detective Minichiello, Moses Weindling and the informant.

Q Did you make any observations of what occurred at the table at that point?

A Yes, I did.

Q Please describe that to the jury.

A The next thing I observed was Moses Weindling holding Ms. McIntyre's pocketbook and pass it to Detective Minichiello. I observed Detective Minichiello appear to be looking into something down towards his legs.

The next thing I observed was Detective Minichiello get up from his chair and begin to walk towards the door of the restaurant, the front door of the restaurant.

I observed Detective Minichiello walk to the front door. Just before he got to the door as I turned around I observed Ms. McIntyre get up from the table and begin to walk to the rear of the restaurant.

I turned around. Detective Minichiello was by his vehicle which was parked outside in front. I turned around again and Ms. McIntyre was going down the stairs.

Q Did you make any observation of the table you labeled with the two A's at this point where you say Ms. McIntyre was heading down the stairs?

A Yes.

Q What were your observations?

A If I recall, the older female was at the table, but not the younger girl.

Q Had you made any other observation of the younger woman since the time you told the jury that she descended those stairs?

A No, I did not.

Q Continue. What did you next observe?

A I observed Detective Minichiello take his jacket off, which was the pre-arranged signal that he had seen the package of cocaine.

Q What happened at that point?

A I left my location at the bar, proceeded to the rear of the restaurant with Detective Mahone, and placed Moses Weindling under arrest.

Q Could you describe in a little detail for the jury exactly what you did to place Mr.Weindling under arrest?

A Yes. I took my police shield out of my pocket and as I approached the table I showed Mr.Weindling, Moses Weindling, the shield and said, "Police officers. Don't move. You are under arrest".

Q Did you make any observations of the table area at that point?

A Yes.

Q What were they?

A On the top of the table?

Q Or around the vicinity of the table.

A Yes. I observed an attache case on the floor and some glasses had been knocked over.

Q Let me show you what has been previously marked as Government Exhibit 3 for identification. I ask you to look at it, examine it. Take your time.

(Pause.)

Q Do you recognize Government Exhibit 3 for identification?

A Yes. This looks like the attache case I saw on the floor next to Moses Weindling's chair in the restaurant.

Q What happened after you placed Mr. Weindling under arrest?

A I placed him under arrest, myself and Detective Mahone, handcuffed Moses Weindling, and I observed Jon Hansen, Investigator Hansen, bringing Ms. McIntyre up from the stairway. I then went over to Investigator Hansen, I took Ms. McIntyre's pocketbook and I opened it to see if there was anything inside.

Q What did you see inside?

A Just some papers and I think lipstick and that's all.

Q What did you do after inspecting Ms. McIntyre's purse?

A I gave her back the purse and I went to the front part of the restaurant.

Q What did you do after this point?

A I was given the attache case and I transported the attache case and the informant back to my office.

Q Did there come a time that afternoon when you returned to Grass Restaurant?

A Yes, I did.

Q Approximately what time was that?

A Approximately five-thirty.

Q So how much time had elapsed approximately between the time you left Grass and the time you returned?

A About forty or forty-five minutes.

Q What did you do when you returned to Grass?

A I interviewed the employees of the restaurant and I conducted a search.

Q Would you describe that search just briefly?

A Yes. I searched the area of the table where they were sitting, Detective Minichiello's table. I also searched the area downstairs of the ladies'room, the men's room, and also an area where they prepare food downstairs.

Q Were there any other specific objects you examined?

A No. Well, other than the garbage can in the ladies' room and in the men's room.

Q I want you to just step back briefly into your testimony and see if you can remember at what point in the afternoon these two women,whom you have indicated as sitting at that table as the A's,are placed on the board entered the restaurant that afternoon.

A I would say approximately 3:15, three o'clock.

MS. COTE: No further questions, your Honor.

MR. ANOLIK: Your Honor, can we approach

for a minute.

(At the side bar.)

MR. ANOLIK: Your Honor, I can proceed. I want to point out that prior to this witness being called we were first given the 3500 material. We could not read it.

THE COURT: How extensive is it?

MR. ANOLIK: Not long.

MS. COTE: The 3500 for this witness is one sheet of paper which is not here. This is a report by Detective Sandler which I gave out in an excess of caution to both defense attorneys. It has a paragra--

MR. ANOLIK: I'm sorry. All right, I can proceed.

(In open court.)

CROSS-EXAMINATION

BY MR. ANOLIK:

Q Detective, would it be fair to say that you were part of a team, so-called surveillance team, on the 28th of April at Grass Restaurant?

A Yes, sir. That would be correct.

Q You were stationed inside the restaurant?

A That's correct.

Q Can you tell us whether or not you were designated as the one to give the signal inside the restaurant as to when an arrest should take place?

A No, sir.

Q In other words, anyone there could have done it if they had seen the signal from Minichiello?

A Yes.

Q It was just fortuitous that you saw the signal?

A Perhaps I saw it first. I don't remember.

Q But if someone else had seen it first they would have given the signal, is that correct?

A It's possible, yes.

Q But be that as it may, there did come a time, did there not, that an arrest was made?

A That's correct.

Q I want to backtrack a little bit.

Have you spoken to Detective Hansen, Investigator Hansen, about this case at all?

A We discussed it, yes.

Q Are you aware then of the fact that he followed Ms. McIntyre downstairs right before the arrest took place? Did he tell you that?

A Before the arrest took place?

Q Immediately preceding her arrest and the arrest of Mr. Weindling.

A Yes.

Q Was that part of the plan, to keep these people--

A Can I correct myself on that.

Backtrack one question. Did you say before the arrest of Weindling?

Q You testified, I believe, that there came a time that Ms. McIntyre went downstairs and came back and after she came back she handed her purse, as you said, to Mr.Weindling, is that correct?

MS. COTE: Objection. That question is without foundation.

MR. ANOLIK: Maybe I misunderstood the testimony.

THE COURT: We have two areas of time.

Q Did you testify at all that Ms.McIntyre had left the table during the period of your surveillance?

A Yes.

Q Was it more than once or only once?

A More than once.

Q How many times?

A Twice.

Q The first time that she left the table, when was that about?

A Approximately 4:30.

Q That was the first time she left?

A Yes.

Q Did there come a time that she returned to the table?

A Yes.

Q How long thereafter?

A Approximately ten minutes.

Q You said she had been downstairs, is that correct?

A That's correct.

Q Have you since learned that there is some facility particularly adapted for ladies downstairs, a bathroom, in other words?

A Repeat the question.

Q There is a ladies' room downstairs?

A Yes.

Q If she wanted to use that facility she would have had to go downstairs?

A Yes.

Q That would have been true of any other lady that wanted to use the facility?

A That's also true.

Q Ten minutes later you say she came back?

A That's correct.

Q What did you observe when she came back?

A I observed her sit down at the table again with Moses Weindling, Detective Minichiello and the informant.

Q What did she do?

A The next thing I observed was Mr. Weindling holding her pocketbook.

Q Holding her pocketbook?

A Yes.

Q Then you say you saw Mr. Weindling do something?

A Hand the pocketbook to Detective Minichiello.

Q Thereafter what did Detective Minichiello do?

A The next thing I observed was Detective Minichiello get up from the table.

Q With or without the pocketbook?

A Without the pocketbook,and walk to the front of the restaurant.

Q Were you keeping that table under surveillance at this time?

A Constant observation?

Q Yes.

A No, sir.

Q There were people there who were, isn't that true?

A There were other officers in the restaurant. Whether they could see the table or not, I do not know.

Q Where you were positioned could you see the table?

A Yes, sir.

Q What I am trying to get at, I'm not asking you whether or not someone coughed or sneezed. What I am saying, did you see someone else, another human being, other than the people sitting at that table, come over to the table and give something or take something away?

A No, sir.

Q That you would have been alerted to?

A Yes, sir.

Q You stated there was another time during the period of your surveillance after Detective Minichiello left the table that you saw Ms. McIntyre get up from the table again, isn't that true?

A That's correct.

Q Would you tell us what you observed then?

A I observed Ms. McIntyre get up from her chair and begin to walk towards the rear of the restaurant.

Q Again towards the bathroom area?

A Yes,sir.

Q Getting back to my initial question at the start of the examination, isn't it a fact that Detective Hansen or Investigator Hansen then followed her downstairs?

A No, sir.

Q You don't know, is that it?

A No, sir, he didn't.

Q He did or did not?

A He did not.

Q Did you discuss this case with Detective Hansen?

A I discussed the case, yes,sir.

Q Did he tell you that he went downstairs?

A Investigator Hansen went downstairs after.

Q Almost immediately, isn't that true?

A After I arrested Moses Weindling.

Q Is it your testimony then she was down there for a period of time without anybody with her, is that your testimony?

A That's correct.

Q If Detective Hansen said otherwise he would be mistaken, is that correct?

A Yes, sir.

MS. COTE: Your Honor, this is suggesting --

THE COURT: I sustain the objection. Strike it out. Objection sustained.

Ladies and gentlemen, when an answer is stricken, I know we have all heard it, but put it from your minds. You are not to consider it in any way at any time during the proceeding.

Q How long after Detective Minichiello left, did you get the signal?

A After he left the table?

Q Yes.

A Well, as long as it took him to walk from the table to the car; I would say ten to fifteen seconds.

Q Ten to fifteen seconds?

A Yes.

Q How long after he got up from the table did you see Ms. McIntyre leave the table?

A Maybe five or six seconds.

Q In other words, a period of about eight seconds elapsed before you got the signal and Ms. McIntyre started the walk to to the back of the room?

A About five seconds. Five or six seconds.

Q As soon as you saw that signal you effectuated an arrest?

A As soon as I saw the signal from Detective Minichiello I told Investigator Hansen and Detective Campbell, "bust them". We got up from the table. I walked to the back. I arrested Moses Weindling.

Q And Detective Hansen immediately went to arrest Ms. McIntyre?

A Detective Hansen was standing at the top of the stairs. I said, "Go down and get her".

Q So a matter of just seconds elapsed, isn't that true?

A At that point it might have been closer to a minute.

Q Closer to a minute, but you are not sure?

A I'm not exactly sure.

Q But certainly it was a very short period of time, possibly less than a minute, the arrest of Ms. McIntyre also occurred?

A Yes.

Q Did Mr. Hansen tell you he found Ms. McIntyre at a phone booth?

A Yes.

Q Apparently making a call because he said the coin returned, she was not able to complete the call.

A I believe that's correct, yes.

Q You say that you saw two women at this table here which you designate A and A, is that right?

A Yes.

Q You didn't know who those women were, did you?

A At the time, no.

Q At any time?

A No.

Q Do you know now who they are?

A No, sir.

Q As far as you could observe did they talk to Ms. McIntyre?

A No, sir.

Q Did they talk to Mr. Weindling?

A No, sir.

Q Were there other people in the restaurant having lunch or drinking?

A Yes, sir.

Q YOu have already testified that in order to use the ladies' facilities you had to go downstairs.

A That's correct.

Q So other than the fact that you observed one or both of these women at some point in time going downstairs you saw nothing else they did, isn't that true?

A That's correct.

MR. ANOLIK: I have no further questions.

CROSS-EXAMINATION

BY MR. JOY:

Q Agent DeRosa, have you discussed your testimony since yesterday with anybody?

A No, sir.

Q You have not discussed it with either of the two United States Attorneys, either yesterday or today, is that right?

A No, sir.

Q Have you discussed your testimony or the testimony of any other witness in this case since yesterday?

A No, sir.

Q Do you recall how crowded the restaurant was when you arrived?

A When I arrived?

Q Yes.

A Yes, sir. It was fairly crowded.

Q At what time did the defendants arrive?

A Approximately 2:35, 2:40.

Q There are tables throughout the entire area indicated on this chart, out by the sidewalk, through here, and over here, right?

A Yes, sir.

Q Did you see how many women were in the restaurant during the course of your observation?

A How many women?

Q Yes.

A I have no idea.

Q You testified as to two of them. Were there more than two women in the restaurant?

A Yes.

Q Did any of them go down to the ladies' room or go down those stairs?

A I don't recall.

Q In addition to a ladies' room, downstairs there is a telephone, correct?

A Yes, sir, that's correct.

Q So that if somebody wanted to use the telephone they would have to go down the stairs also?

A That's correct.

Q Did you prepare any reports regarding this incident?

A No, I did not.

Q Did you contribute anything to the reports of anybody else, any other officer in this case?

A They might have asked me for a time or a location possibly. I don't recall.

Q Did you read the reports of the other officers in this case?

A Yes, i did.

Q By the way, how long have you been working for the Task Force?

A Approximately five and a half years.

Q You have acted in both an undercover and a backup capacity?

A Yes, I have.

Q Occasionally you prepare reports, do you not?

A Yes, sir.

Q The purpose of those reports is to write down the events while they are still fresh in your mind, is that correct?

A That's correct.

Q So that you can refer to them at some later time, is that right?

A Yes,sir.

Q Did you tell anybody about your observations of these two women, the older one and the younger one seated at the table?

A Yes,sir.

Q Was that included in a report?

A No,sir, it was not.

Q Did you tell any of the other officers about other people who were seated in the bar that day?

A Other than the defendants?

Q Other than the defendants and the two women you have testified to.

A No, I did not.

Q As far as you know no report contains any information about these two women?

A That's correct.

Q Are there tablecloths on the tables in this restaurant?

A Yes, sir, I believe there are.

Q You have stated that you observed at one point Ms. McIntyre hand a bag to Mr. Weindling, is that right?

A No, sir.

Q She didn't hand the bag to Mr.Weindling?

A I said the next observation I made was Moses Weindling had the pocketbook.

Q You didn't see her hand it to him?

A No, sir.

Q When they were examining the pocketbook or when Minichiello was examining the pocketbook, where did he have it?

A He had it between his legs.

Q You mean down on the floor?

A I would say he was sitting in the chair and he had it on the chair here.

Q Minichiello, I believe, was seated at the back of the table, is that correct?

A That's correct.

Q You were located where it says the "D" for DeRosa, isn't that right?

A That's correct.

Q So that you were looking -- you cannot see the table because of the pillar directly?

A That's correct.

Q So you were looking at a reflection on the pillar marked "P"?

A That's correct.

Q And then that reflected back onto the table, is that right?

A Yes,sir.

Q Minichiello would then be at the far corner from that pillar?

A Yes,sir.

Q There came a time when you saw this signal to make an arrest, is that right?

A That's correct.

Q That was Minichiello taking off his jacket?

A Yes, sir.

Q Where did he take off the jacket?

A Right out in front of the restaurant.

Q That would be at the front of the entrance?

A That's correct.

Q You could see from your position at the bar him taking off his coat, is that right?

A Yes, I could.

Q When he walked out did he say anything to you?

A No, he did not.

Q Did you follow him as he walked out the door?

A You mean did I physically follow him?

Q Did you follow him with your eyes, did you watch him as he went out?

A Not all the time.

Q Were you able to see the two other agents, Campbell and Hansen, were they were sitting?

A Yes, I could.

Q Did you see whether they watched Minichiello as he walked out?

A I don't recall, sir.

Q When you saw the coat being removed, you then spoke to these two officers, is that right?

A And Detective Mahone.

Q Mahone?

A Yes.

Q You said "Let's make a bust", or whatever?

A I said "Bust them".

Q Who was in charge of this operation?

A Special Agent Panessa.

Q Where was he?

A He was outside the restaurant at that point.

Q Prior to your going to the restaurant did you have a meeting with the other members of the team to determine what each member's role would be?

A Well, we have a meeting, but we don't actually give each member a designated role per se.

Q Who was present at the meeting?

A Myself, Special Agent Panessa, Special Agent Sandler, Detective Daly, Detective Mahone, Investigator Hansen, Detective Campbell, everyone that was part of our team.

Q Where did you meet?

A At the Task Force office.

Q That was on the 28th?

A 57th Street.

Q I mean it was on April 28th?

A Yes.

Q About what time did you all meet?

A It would have to be before we went to The Grass Restaurant..

Q Somewhere around noon?

A I guess it was around noon.

Q Was anyone there?

A I don't recall.

Q Officer Panessa?

A Yes.

Q He discussed with you all what was going to happen?

A The best I can recall, counselor, is that we had a meeting. Exactly what transpired at the meeting, I can't recall.

Q Following the meeting you all went either outside or inside The Grass Restaurant?

A No, sir.

Q Where did you go?

A The first two to leave the office were myself and Detective Mahone.

Q Where did you go?

A I went directly to the restaurant.

Q Do you know where the other officers went?

A At that point?

Q Yes.

A No, sir.

Q The meeting was held for the purpose of deciding who was going to be at or near The Grass Restaurant, correct?

A Yes, sir.

Q There was a discussion as to whether some people would be inside and some people would be outside, right?

A That's correct.

Q Your assignment and that of Hansen and Campbell and Mahone was to be inside?

A No, sir.

Q Was your assignment to be inside?

A That's correct.

Q Do you know the assignment of Investigator Hansen?

A Outside.

Q Outside?

A Yes.

Q Was he to come inside at some point?

A I don't believe that was discussed at the meeting.

Q You say you had seen the bag at the table being examined, is that right?

A Excuse me. Repeat that.

Q The bag, the purse that you saw Mr.Weindling with, you saw him hold it and you also saw Minichiello hold it, is that right?

A That's correct.

Q How soon after that, that you saw that, did Minichiello leave?

A I would say approximately a minute or so.

Q Approximately a minute or so?

A Maybe two minutes.

Q You then saw Patty McIntyre go down toward the ladies' room area, is that right?

A After Detective Minichiello had left the table, yes, sir.

Q Did you see her with her bag?

A Yes. She had her pocketbook with her.

Q Was there any arrangement as to who was going to bust whom? In other words, was there an agreement between you as to who you were going to arrest and who Officer Hansen was going to arrest?

A No. I believe it was more automatic.

Q It was automatic?

A We work as a team and it is more or less automatic between us.

Q Did you say anything about the bag? You said "Let's bust them". You directed Hansen to go after Ms. McIntyre, is that right?

A I didn't direct Investigator Hansen to go after McIntyre. He was already going in that direction.

Q Did you point out the bag to him?

A No, sir.

Q When he came up you said you looked in --

A I looked into the pocketbook, yes.

Q When did you first discover there was not any cocaine?

A When I was back at the Task Force office at 57th Street.

Q When you were in the restaurant you had no idea whether any cocaine was found or not?

A I presumed --

Q You didn't know of your own knowledge?

MS. COTE: Can he finish the answer?

THE COURT: Let me hear the question.

(Question read.)

THE COURT: Continue with the examination.

Q When you were in the restaurant you didn't know of your own knowledge whether any cocaine had been found?

A No, I did not.

Q You didn't find any?

A I did not find any.

Q You were not present when anyone else did, is that right?

A That's correct.

Q These women you have testified to, did you arrest them?

A No, sir, I did not.

Q Do you know whether anyone else arrested them?

A No, sir. They were not arrested.

MR.JOY: I have no further questions.

FURTHER CROSS-EXAMINATION

BY MR. ANOLIK:

Q Detective, referring to Exhibit 3. This was a bag that you took from my client, Mr.Weindling, is that correct?

A No, sir. That is not correct.

Q Who took it?

A I don't know.

Q Didn't you effectuate his arrest?

A Yes, I did.

Q Did he have this bag with him?

A The bag was laying on the floor. I did not pick it up.

Q Do you know if anybody did?

A I presume somebody did. Because I transported it back to the office.

Q Was it given to you by someone?

A Yes.

Q Who?

A I don't recall.

Q Was it opened in your presence?

A Yes, it was.

Q It was broken open, wasn't it?

A Yes.

Q Did you ask Mr. Weindling for the key?

A I really don't know, counselor.

MR. ANOLIK:. I have no further questions.

REDIRECT EXAMINATION

BY MS. COTE:

Q Investigator DeRosa, did you call my attention to this object earlier today?

A Yes, I did.

MR. ANOLIK: May we have it marked for identification?

MS. COTE: I was just proceeding to do that.

(Government Exhibit 5 was marked for identification.)

MR. ANOLIK: May we approach --

THE COURT: Let's take our mid-morning recess at this time, ladies and gentlemen.

(Jury leaves the courtroom.)

THE COURT: Now what?

MR. JOY: I am going to ask for a mistrial on the basis --

MR. ANOLIK: I will join in that.

MR. JOY: -- that bag happens to be the property of my client. It was brought here by her. There is no search warrant by the Government. They had absolutely no right to seize that bag and offer it in evidence in any way. I object strenuously, and I ask for a mistrial on the grounds it is absolutely shocking that they should in the middle of court take something that belongs to my client and prepare to use it in their case.

THE COURT: Let me observe, so we have a full picture. Your client has a handbag that has been in front of her all morning long on the counsel table, and it is there right now.

MR. JOY: That's correct.

THE COURT: This is a bag that happens to be hanging on a coat tree in the United States Courthouse in a corner of the wall. Let's go from there.

How did it get there?

MR.JOY: It was put there by my client.

THE COURT: Obviously it is not the handbag she is using this morning as a handbag for her personal use.

MR. JOY: I don't know.

THE COURT: I have observed the handbag in front of her.

MR. JOY: People can have two handbags. There is nothing --

THE COURT: There is nothing that says somebody cannot have two handbags but this is not something that is ripped out of her hand that is a personal bag. The bag she has been using she has had with her. Let's go from there.

What was it brought here for?

MR. JOY: Your Honor, this is in no way abandoned or left in the courtroom overnight or something of that sort. This is property, the same way -- it is your raincoat. Suppose I went in and searched the raincoat -- except I am not the Government -- of an article that belongs to somebody in this court. There is no indication whatever this was abandoned or in any way out of the control of Ms. McIntyre. I see no reason why it should be seized by the Government.

MR. ANOLIK: Your Honor, this came to me as a surprise. I know that,your Honor, I may not have standing here, except that we are on trial now, and it is a conspiracy case. So to that extent I do feel my client is damaged as well. I don't know what the contents are. This is the most extraordinary thing I have seen in over a quarter of a century in practice.

THE COURT: Let's find out what the Government has in mind to do here.

MS. COTE: I contest that there has been a seizure at all. I walked over to the coat tree and had marked for identification an object that was there.

Secondly, there has been no search of the bag. I did not open the bag at all and I did not intend to. Nor do I intend to ask the witness to open the bag and look inside at any of the contents.

However, it should be observed that the bag although it is approximately a bag that would normally, if you will, have a width of approximately four inches, is flat as if there was nothing in it at all.

Lastly, I would like the Court to know before I explain what the Government intended to use the bag for, that it was hanging in a very open position in full view of the witness, the jury, and the prosecutor.

I merely intended to ask the witness, your Honor, to repeat what he had said to me this morning when he called my attention to this bag and to ask him if it looked similar to the bag that he took from Ms. McIntyre in Grass Restaurant.

THE COURT: I take it it was returned to her at some point?

MS. COTE: Absolutely.

MR. JOY: This is the same thing as if the Government had decided they liked this bag and they wanted to appropriate that as well. I see no basis --

THE COURT: Mr. Joy, what was the bag doing there in the first place?

MR. JOY: It was hung there by my client.

THE COURT: Is there anything in it?

MR. JOY: I have not opened it yet.

THE COURT: Why don't you open it.

MR. JOY: The point is that the Government technically in the middle of a court should not be permitted to seize property belonging to a defendant. It is not contraband.

THE COURT: If your client puts it up on a coat tree opposite the jury box and some fifteen feet across the room from the jury box and -- I take it it has nothing in it?

MR. JOY: I don't know. It does not matter.

THE COURT: I think it does matter because I think the question is, why is it there?

MR. JOY: Your Honor, so the record is clear on appeal, are you ordering me now to open this bag to see what is in it?

THE COURT: I am. I want to find out the circumstances under which this got there, to see whether under these circumstances your client had something that was seized from her in a high-handed fashion, or whether this was something stuck by her on a coat tree in the full observation of the jury. It is not being used to carry any personal article, so it can't be claimed to be the handbag she had her makeup and her subway tokens and her change purse in, because then there is some other purpose for putting it on that coat tree.

MR. JOY: Your Honor, the problem is -- I will open it. I do it under protest.

There does not appear to be anything in it other than a wrapper that says "Grass".

MR. ANOLIK: Which would be very incriminating.

MR. JOY: Yes. I think to have the Government seize this now is absolutely in violation of every constitutional --

THE COURT: They never got to the stage where they found this wrapper.

MR. BELLER: May I point one thing out --

THE COURT: Let me go a little further.

Mr. Joy, you have been proceeding in this case on the theory, I assume, that your client was in that restaurant. You conceded that she had been seen in that restaurant. It seems to me entirely logical -- what is that little thing that says "Grass"? A match book?

MR. JOY: A mint wrapper.

THE COURT: She has been in the restaurant. You make no dispute that she has been there.

MR. JOY: I don't think --

THE COURT: Stick with me for a minute. Do you acknowledge that your entire examination has proceeded on the theory she was there? You opened to the jury on the theory she was there. She made the mistake of associating with the wrong person at the wrong time. She happened to be there and that was her tough luck. She was not involved in narcotics. The fact that there is a Grass mint wrapper in her handbag is evidence of nothing incriminatory. You acknowledge she was there?

MR. JOY: I think if this is offered in evidence or used in any way the jury will assume that this is the bag in fact she had in the restaurant on that particular day, and I think that for the Government to seize this -- it is within five feet of the defendant --

MR. ANOLIK: Two feet.

THE COURT: It is not the bag that she has her personal articles in.

MR. JOY: She happens to move them from bag to bag.

THE COURT: I did not observe that at all during the morning. While the agents have been testifying about her bag, I happened to notice she had in here a black bag or almost black handbag, and I have observed that through the morning.

Why there should be a second handbag in the courtroom today which has in it only one article, namely a Grass mint wrapper, and why that bag should be hung up on a coat tree at the eye level of a person five foot nine, ten, or eleven in height, across from the jury box, sort of escapes me.

MR. JOY: Where should she have put it?

THE COURT: Why is it here at all?

MR. JOY: She has a right to bring bags into the court.

THE COURT: She has a right to bring a second bag to court. Apparently this agent is prepared to say that that looks like the bag he saw.

MR. JOY: If they want to do that, the thing for the Government to do is to produce some bag that is in general the same size as the bag this agent thinks was used in the restaurant that day, either that or get a search warrant.

THE COURT: I don't see it. I deny the motion for a mistrial.

I gather that all the Government is going to do is say "This looks like the bag? Do you remember seeing it that day?"

MR. ANOLIK: I am asking for dismissal of the indictment on the grounds of prejudice. This is an act created by the Government --

THE COURT: Mr. Anolik, please. That is a frivolous argument.

MR. ANOLIK: It is not frivolous.

THE COURT: You are not entitled to a dismissal of the indictment even if it is a mistake. Don't urge that upon me.

MR. ANOLIK: May I make a record?

THE COURT: I don't want to hear it.

MR. ANOLIK: I would like to place this on the record.

THE COURT: If there is a mistrial you get a new trial. Asking me for the indictment to be dismissed -- I don't want to hear it.

MR. ANOLIK: May I address the Court?

THE COURT: It is so frivolous I don't want to hear it.

MR. ANOLIK: Then I move for a mistrial,being denied the Sixth Amendment right of confrontation. You are not permitting me to make a record. You say I can't pursue this argument. I have over twenty-five years at the bar.

THE COURT: If you are going to argue on a brief that says you should have been given a dismissal because of these facts, you are liberty to do so, but I don't have to hear legal argument on this question. If you want to urge upon me some fact that is not in the record, I will hear it.

MR. ANOLIK: May I explain why I am doing this. I will take two minutes.

The reason is, your Honor, when the Government does something to precipitate a mistrial, it should not be an onus on us to permit us to retry it. That is the reason I am making the motion.

THE COURT: Your motion is denied for dismissal. I regard it as wholly frivolous.

Secondly, I am not quite clear in my own mind as to the defendant McIntyre, having in some way contributed to these circumstances, what the right of the Court or anybody else is to determine why that bag is here.

I may have no right to ask questions regarding that, but I do not understand why a bag is here in full view of the jury when it is not needed for this lady's personal use; and it is perfectly clear it is not needed for this lady's personal use. Why that bag came into the courtroom and was hung on that coat tree I do not know, and whether I have a right to ask about that, I have some doubts, but I am going to consider it during the recess.

In any event, the motion for a mistrial is denied.

MR. ANOLIK: I want to apologize if I pique the Court. It is only in the interest of representing my client.

THE COURT: I am prepared to listen to any reasonable argument from any lawyer.

For you to say because of this incident your client is entitled to a dismissal of an indictment is in my judgment so frivolous it need not be considered.

MR. ANOLIK: If we move for a mistrial only we waive the right to move for dismissal.

THE COURT: I don't believe there is a possibility of a snowball in professional hell to get a dismissal on this incident, and I regard it as frivolous to have been asserted.

(Recess.)

THE COURT: Ms. Cote, what would you be for doing in terms of proceeding with this particular line of inquiry if you were left to your own devices?

MS. COTE: The Government is fully content to let the purse remain where it initially was now that it has been marked for identification, I believe at Mr. Anolik's request.

MR. ANOLIK: At my request.

MS. COTE: The record will reflect he asked it be marked for identification.

MR. ANOLIK: Let me explain why. It is quite true. I was not aware at the moment that it was her bag.

I thought the Government had left it there for some reason. That's the reason I asked for it to be marked.

MS. COTE: The Government would ask the witness to step down and without touching the bag at all to look at it carefully and ask him if it looks similar to the bag that defendant McIntyre had with her and that he inspected it at The Grass Restaurant on the day of the arrest. That question would have been preceded by drawing his attention to what he had pointed out to me this morning, that she carried the bag to the courtroom.

THE COURT: How about if you have the latter question without the former, or rather the former without the latter, that this is similar to the bag? Is it sufficient?

MS. COTE: I would prefer there be some connection to the defendant McIntyre revealed. She did bring the bag to court.

THE COURT: Do you have objection to that?

MR. JOY: I think the problem is that we have already gone too far. She snatched the bag and has brought it up and had it marked, and now she is going to call attention to it. I think the only thing at this point that can be done, if the Government has some other bag that they want to use, and it's roughly equivalent to the size of a bag that they think was used in the restaurant, let them produce such a bag and say, "Is this roughly the size?", and that will not at least create any idea to the jury this is in some way connected with Patty McIntyre.

THE COURT: I gather, to put it in a nutshell, the Government is going to bring out she was observed to bring this bag to the courthouse today and it looks similar -- he will say it is similar -- to the bag he remembers seeing that day, and inspecting it.

MS. COTE: Right.

THE COURT: What is the legal objection to that?

MR. JOY: The legal objection to it is that she has already taken the bag.

THE COURT: I understand.

MR. JOY: At this point I think that in itself is grounds for a mistrial.

THE COURT: Is there any Fifth Amendment, Fourth Amendment objection, evidentiary objection?

MR. JOY: She is in effect testifying by the result of the bag. It is not just being used by the Government as saying, "Can you tell us in general, Officer, what this bag looks like", and he says, "It's a bag this big", and so on. That of course I have no objection to.

I don't think there is an objection to that. But having taken a bag belonging to the defendant and brought it forth, to have the witness now asked additional questions about that bag, I think it just compounds the error that has been made by taking it in the first place.

THE COURT: I think we are all agreed that if somebody wanted to say how was she wearing her hair on the day in question, April 28, 1977, and the answer was she is not wearing it the same as she is today or she was wearing it the same as she is today, that would be perfectly permissible.

MR. JOY: I agree.

THE COURT: You are observing the defendant and something about her, or that she has brown eyes instead of blue. Now the defendant having brought an article -- and I assume the same thing is true of clothing: You can ask a witness how was she dressed on that day, is she dressed differently now than she was then, that is permissible.

MR. JOY: Certainly.

THE COURT: If the defendant happens to wear certain articles of clothing to the courtroom, they may ask about the articles of clothing on the person. In this case the defendant happens to bring a second purse to the courtroom. She was observed doing it. It seems to me it is permissible to ask the questions that the Government has told me they intend to ask.

In addition to which I just want to make this observation. If one permitted one's mind to play around with it, put it that way, one could speculate on all kinds of reasons as to why there is a second handbag in this room and why it is hung on a coat tree at eye level across from the jury. It need not have been there. It could have been on the floor or if Ms. McIntyre didn't want it on the floor I gather that her mother is seated in the back of the courtroom and has been here through the entire trial; her mother could have held it for her.

So one has some interesting thoughts as to why is that bag there where witnesses could be looking at it, and then ask questions about it, if desired, or where a jury is staring at it. There are a lot of provocative questions that arise that I am not going to bother about answering except to observe that where the defendant brings a bag into the courtroom as a second bag, places it up squarely in front of the jury, it seems to me what follows has some legitimacy.

In addition, I see utterly no prejudice.

You don't dispute, Mr. Joy, that she was in the Grass Restaurant on April 28th, and that she was sitting at a table with these three people? You don't dispute, I assume, that she had a handbag on that particular day? I don't think she would dispute that. I am not going to get to her, but you don't dispute she had a handbag on that particular day? Your position is that she picked the wrong company at the wrong time. I don't see how you are prejudiced by the fact that this is so identified as a similar bag to the one that was seen in her custody on the day in question.

MR. JOY: Your Honor, I think there is another point, and that is if it is so used there is a necessity, or maybe a necessity, for the defendant to explain something regarding the bag. Why was it brought to court, what was in it, and so on, which the defendant is under no obligation whatever to have to do. The Government doesn't care about having the witness testify as to what the bag looked like. If they were interested in that, they had a number of witnesses, including Mr. Minichiello, as to what size the bag was. They didn't choose to. They saw an opportunity to take the bag and are using it in that manner.

I think to prejudice it further by having an additional point made regarding her particular bag -- and I assume at this point they are going to say, "Is this

Ms. McIntyre's bag?" Or are they going to assume this is just a bag that is hanging --

THE COURT: They are going to say it is Ms. McIntyre's bag.

MR. JOY: That of course is only because she said it was her bag.

THE COURT: No. She brought it in.

MR. JOY: She is testifying in effect when she is not required to offer any testimony.

THE COURT: He saw her bring it into the courtroom and this looks like the bag. That was what it amounts to.

MR. JOY: I think your Honor has gotten my points. I think there is prejudice involved. I think the Court has an obligation to at least make an effort to make sure that the prejudice that has already arisen by the Government taking the bag, seizing it -- at least if the Government wants to make a legitimate point as to the size of the bag, there are one hundred other ways to do it other than this one prejudicial one.

I think in fairness the Court should direct the Government to choose one of those other avenues.

MR. ANOLIK: May I be heard very briefly?

Would your Honor's opinion have been different if Ms. McIntyre had brought the bag in in a suitcase and someone saw her open the suitcase and take something out, and the Government went over and took it out of the suitcase and --

THE COURT: Judges don't get into that.

MR. ANOLIK: I am speaking rhetorically.

THE COURT: We had it hung by her on a coat tree as a second handbag in the room.

MR. ANOLIK: If they merely asked, "Do you see something in the courtroom that looks like it?" It would not have been attached to her.

THE COURT: He was going to say she brought it in this morning.

Let's get the jury.

MS. COTE: One minute. May I have one moment.

(Pause.)

MR. JOY: One thing I would like to put on the record. It does not have to do with this point.

At the beginning of the trial I objected to testimony of a witness as to what Mr.Weindling had said which would be hearsay unless it was sufficiently connected and a conspiracy was established.

Your Honor stated at that point you were overruling it subject to connection. I just would like the record to be clear that I have not continued to object on those grounds when there has been testimony of things that Mr.Weindling has said. That would be hearsay under that ruling and rather than having to stand up each time and object, I would like to be understood to have a continuing objection unless and until a conspiracy is established sufficiently to the extent --

THE COURT: Mr. Joy, very early in Mr. Minichiello's testimony, in my judgment, there was testimony which if credited would warrant the jury in finding a conspiracy. Therefore, I don't think that objection to be well-taken at this time.

MR. JOY: For the record, so I don't have to stand up each time to make an objection to testimony that is hearsay beyond --

THE COURT: I understand. But I think the connection has been demonstrated if the testimony of Mr. Minichiello is credited.

MR. JOY: In other words, what your Honor is saying is through the testimony thus far your Honor is making a finding that there is a sufficient showing of a conspiracy in order to admit the hearsay statements of the co-defendant?

THE COURT: In my judgment that is so.

MR. JOY: I would object, of course, to that finding.

MR. BELLER: One thing we might do. I think your Honor is right. Our concern was that this bag is here and that it was in a way, to use Mr. Anolik's phrase, a kind of trial by ambush. At some point the bag having been in view of the witnesses, at some point the defense was going to say, just as Mr. Joy is making an argument, "Well, she has brown eyes and a trained detective said she had blue eyes", that either in her testimony or somewhere along the line there was going to be an argument, "Didn't you bring this bag to court and wasn't it in plain view of the agent all the time and nobody has identified it?", and so on and so forth. In that way reflecting on perhaps, as this argument would go, the agent's ability to see things in the restaurant and so on.

I think if Mr. Joy and Mr.Anolik would stipulate that such a thing was never in their mind, or if it was in their mind at least they will forget that line of inquiry, we don't have particularly much need to protect ourselves by having the agent say what he thinks the bag is and what in fact it turns out to have been.

So if they will stipulate that the Government's concern here of being "tried by ambush", so to speak, is not an eventuality that will occur in this trial, we will forego without conceding there was anything improper in anything that was done. If they will stipulate to that, we won't go ahead and have the witness identify the bag.

MR. ANOLIK: Your Honor, I will state for myself that, (1), I never knew what the bag looked like. I was unaware of the fact that that was her bag. I can't stipulate to anything. I was not aware it was her bag until it was pointed out.

MR. JOY: Your Honor, I will state for the record that that possibility -- maybe I am not very bright, but that had never occurred to me and I have no objection now that it has been mentioned. I would not use it nor did I intend to.

MR. BELLER: This bag will not be mentioned in this circumstance throughout the rest of the trial, either in Ms. McIntyre's testimony or anybody's testimony in the defense case.

THE COURT: The bag in connection with this coat tree?

MR. BELLER: That is correct.

THE COURT: Is that agreeable?

MR. JOY: The proposal now is to forget about the bag, is that right?

THE COURT: That's right.

MR. ANOLIK: I see no reason for me to ever mention it. I will not stipulate. I am telling your Honor, as an attorney, I see no reason to mention it.

THE COURT: To mention the fact that that is on the coat tree in front of the witnesses and the jury.

MR. ANOLIK: That is correct. But if something should develop later on in the trial that has nothing to do with what Mr.Beller suggested,I don't want to be precluded from mentioning it. If it has some other reason for being mentioned other than what happened now, I don't want to be foreclosed from that part of it. You can appreciate it is possible it can come into play in some other role.

MR. BELLER: We think we have offered a very fair compromise solution. If the defendant won't agree to it, we will go ahead. If they do agree, we won't.

MR. ANOLIK: A compromise solution because you have something that gave rise to an objection by what the Government did. Your Honor has ruled and we respect your Honor's ruling that our objection is overruled. Our motion for a mistrial is denied. We respect that. But to say now that we, in order to foreclose the Government from what we believe what may be compounding error from going forward, we must now stipulate to withdraw from considering something that later might be relevant, not in the context of what Mr.Beller says, I have no present intention, nor do I foresee why I should ever have an intention of asking a witness, "You mean to say you were here all this time and you didn't notice this bag?" I would never think of doing that. But if the bag should become relevant for some other reason, I don't want to be foreclosed by a stipulation.

THE COURT: I don't think that is the intention.

MR. JOY: I think I understand what the Government is offering and I would think that they will not -- I would stipulate now but if it becomes relevant some time later in the trial for something other than "you mean to say you have seen this bag hanging all the time", I cannot say I should not use it then.

MR. BELLER: If this bag comes in at a later time and this is the same bag the jury has seen, just as we saw it hanging up here -- the jury can make the inference later on: The agents were there, they saw the bag as we saw it, how come they didn't identify it?

If they are going to offer the bag later on, a bag Ms. McIntyre brought into court, we are going to go ahead and do what we want to do now. Unless they can satisfy us, we are not going to be trapped. In that respect we should go ahead. That is the only reason why we want to have this examination of the witness. If they don't want to stipulate, based on this offer, then we will go ahead.

MR. JOY: I don't think we are sure as to what we are talking about.

MR. BELLER: I think I made it pretty clear. If the bag is going to be offered by the defense at a later time, the jury will know that this is the bag that has been hanging in here in the courtroom while the agents testified. They are going to think that there was something strange as to why it is that the agents didn't identify the bag.

Therefore, we have to protect ourselves against that possibility.

MR. JOY: Even though we don't mention it in that context or ask any questions about it or use it or make that point on summation?

MR. BELLER: It does not have to be mentioned. It's a good defense strategy to have something in the juror's mind that might prevent him from voting guilty in this case. It does not have to be mentioned.

It's something that has been sitting there for two hours which all the jury has seen during the agent's testimony. If the defendant wants to offer the bag we have to go ahead and protect ourselves.

MR. ANOLIK: The bag has never been distributed so far.

THE COURT: It is identified by exhibit number.

MR. ANOLIK: Now, but prior to that it had never been distributed. Why even assume that we are trying to do something along those lines?

MR. BELLER: If they are not, then they can stipulate, and if they are, they don't want to stipulate, then we will go ahead with what we think is a perfectly proper thing to do.

It's as if the agent saw her walking in today, she put the bag up there and he got on the stand and Ms. Cote said, "Did you see defendant McIntyre this morning? Was she carrying a bag? Did you look at the bag? Come down and look at the bag; don't touch it, don't look inside. It's similar to the one she had in the restaurant?"

That's all.

I don't mean to argue this. We asked for a stipulation. If they don't want to stipulate on the terms that we have just outlined, we will go ahead.

MR. ANOLIK: Following the abrupt seizure of the bag for us now to stipulate it looks like we have been caught with our pants down, and we have to stipulate to something. As a trial strategem it's important from our point of view. They could have gone to your Honor and said, "Your Honor, we propose--"

MR. BELLER: We will go ahead. We accept Mr. Anolik's --

MR. ANOLIK: At least let me finish.

I have an inherent abhorrence of stipulations.

MR. BELLER: This is not a stipulation that would go before the jury.

MR. ANOLIK: Mr.Beller, I was courteous to you. I know that you are very anxious to get your point across.

Mr. Beller and I of course have tangled horns before and we are good friends outside the courtroom, but I must say this: I have an inherent suspicion of the stipulation that he offered because I see no reason to stipulate.

I promise your Honor I am not going to try to do anything in any way to deviate from what your Honor's feeling is in the matter. That I can assure you, but for me to make an open statement in front of the jury on behalf of my client --

THE COURT: He didn't ask you for that.

MR. ANOLIK: That was my understanding.

THE COURT: It was not in front of the jury.

MR. ANOLIK: Then I misunderstood him.

MR. JOY: That was not my understanding. It was that we would stipulate now.

MR. ANOLIK: That part doesn't bother me one way or the other.

MR. JOY: Is that it?

MR. BELLER: We don't want it in front of the jury. We want an agreement between lawyers for the parties in this litigation that the bag is not coming in during this trial so that we are not caught --

MR. ANOLIK: Oh, no. That I will not stipulate to. The bag is not coming in?

MR. BELLER: I am preparing to go ahead.

MR. ANOLIK: Judge, in fairness, could I make such a promise? How would I know what is going to develop?

THE COURT: Mr. Anolik, you are a good lawyer and you try your case the way you see fit.

Get the jury.

(In open court; jury present.)

REDIRECT EXAMINATION (continued)

BY MS. COTE:

Q Detective DeRosa, did you point out something to me before court began this morning?

A Yes, I did.

Q Was what you pointed out to me the fact that you observed a handbag that Ms. McIntyre was carrying to court this morning?

MR. JOY: I object to leading.

THE COURT: Somehow we have to have a compromise. Ask him what he observed and he could say it broadly.

We are talking about a handbag. Did you make an observation about a handbag?

THE WITNESS: Yes.

THE COURT: What was the observation?

THE WITNESS: It was a handbag that Patricia McIntyre was carrying.

Q I ask you to come step down from the witness stand and without touching this handbag here, first of all was your observation that you made to me about which handbag?

A This tan handbag here.

Q Step close to this tan bag and without touching it, look at it carefully. Does that look similar to the handbag you examined after Ms. McIntyre was arrested in Grass Restaurant on April 28th of this year?

A Yes, it does.

Q Detective DeRosa, within the last week have you begun an investigation to uncover the identity of the brown-haired woman whom you have described as the woman who followed Ms. McIntyre downstairs in Grass Restaurant the first time Ms. McIntyre went downstairs?

MR. JOY: I object to that, your Honor. Irrelevant.

MS. COTE: Your Honor --

THE COURT: So far it is. Come to the side bar.

(At the side bar.)

MS. COTE: Your Honor, this question was in response to a question on cross-examination as to whether or not Detective DeRosa knew the identity of either of those brown-haired women we have been talking about.

THE COURT: I understand, but the fact that he has an investigation last week, what does that demonstrate?

MS. COTE: I am going to ask him a question following that about whether or not he has identified a person who may be the young brown-haired woman.

THE COURT: And then what?

MS. COTE: And how she is presently employed.

THE COURT: What's her present employment?

MS. COTE: She's an Eastern Airline stewardess.

MR. BELLER: He said he didn't know. That is particularly true he has an idea and his investigation last week has led him to talk to a woman who is a friend of Ms. McIntyre's, whom he believes was the woman in the restaurant. In fact this woman was in the restaurant and is a friend of Ms. McIntyre, hence to support the position that the Government takes in this case. Mr. Joy I believe asked, "Do you know the identity of this woman?" And he said no. That's technically true, but --

MR. JOY: I think they have somebody whom they are going to produce. Fine. But I don't think we should have it put in as evidence of some investigation they are undertaking. I don't think that is relevant to this trial.

THE COURT: I think the whole thing ends up turning on the form in which you put your question. I can see what he is going to testify is hearsay, but if you asked what does he know about this woman and he says -- that opens up the question as to what is the state of his knowledge from any source.

Can we get back to that.

MR. BELLER: Couldn't we agree that you asked if he knew who this woman was?

MR. JOY: I can't remember.

MS. COTE: I thought he said in the plural: "Do you know who they are?"

THE COURT: If you used the word "know", then the questions are appropriate. If you used some other word, I have to see what you used. You opened the door by the word "know".

MR. ANOLIK: I could understand him giving an explanation that I've learned the name of one of them I believe to be so and so, but why do we have to go through the fact that he is conducting an investigation? That's indicating criminality.

THE COURT: He is an investigator. He is investigating the whole thing. He is trying to find out. I don't see a problem with that.

MR. ANOLIK: You will instruct the jury they are not to glean anything from questions and they should not make inferences because of the fact of an investigation,ipso facto there is nothing wrong with the investigation.

THE COURT: I don't think I need to do that at this point.

MR. ANOLIK: We have asked for the identity of all co-conspirators. Are they alleging that this person is a co-conspirator?

MS. COTE: When did you make that request ever?

MR. ANOLIK: I made a request at the beginning of this case for the identity of all conspirators.

MS. COTE: Whom did you make this request of?

MR. ANOLIK: Whoever the Assistant was.

MS. COTE: It was not to me.

MR. BELLER: One second.

THE COURT: This has nothing to do with this.

Do you want to recess for lunch and we will look that up?

MR. JOY: That's a good idea.

MR. BELLER: Won't you agree you said something to the effect, "Do you know who they are or who she is"?

MR. JOY: I said something along those lines, but the exact words I don't remember.

THE COURT: Suppose we recess until five minutes of two.

(In open court.)

THE COURT: Ladies and gentlemen, we will take a luncheon recess until five minutes of two.

It is now a quarter of one. Five minutes of two.

(Jury leaves the courtroom.)

THE COURT: I will see you all at five minutes of two.

(Luncheon recess.)

2:05 P.M.

THE COURT: I think the record should show the question is one of Mr. Anolik asking about his knowledge of these people. In accordance with our side bar conference this opens the door to the Government's inquiry.

JOHN DeROSA resumed.

THE COURT: The entry into this area of inquiry should come from what is his state of knowledge about these people and not from whether he conducted an investigation last week. That may be the subject of further cross-examination. Let's await the event.

MS. COTE: The Government wants to develop through this witness he began to investigate who exactly the brunette was just during this past week. It does not imply that at the time of the arrests any investigation was undertaken.

THE COURT: I will permit that to a limited degree only to establish the time.

MS. COTE: Very brief, your Honor.

(In open court; jury present.)

BY MS. COTE:

Q Do you recall being asked on cross-examination whether or not you knew who the young brown-haired -- by the way that's like brunette --

Q -- woman was who followed Ms. McIntyre downstairs at Grass Restaurant was?

MR. ANOLIK: I object to the characterization. The word "followed" I object to.

THE COURT: In subsequent time she went downstairs.

MR. JOY: No objection to that.

A Yes.

Q Were you instructed during this last week to conduct an investigation relative to the identity of that brunette woman?

MR. ANOLIK: I object.

MR. JOY: I object.

THE COURT: Overruled.

A Yes.

Q Do you have an idea as to who that woman might be?

MR. ANOLIK: Objection to "idea".

THE COURT: I will sustain it. What is your knowledge if any with regard to that woman?

Q Do you now have some knowledge that would lead you to believe who may be the young brunette woman?

MR. ANOLIK: I object to that.

MR. JOY: I object.

THE COURT: What is your state of knowledge as to that person?

THE WITNESS: I have an idea of who it might be.

MR. JOY: I ask that that be stricken as not responsive.

THE COURT: I will overrule that.

Q Have you uncovered the identity of a particular person whom you believe may be the brunette?

A Yes, I have.

Q Do you know how that particular person is employed?

MR. ANOLIK: I object to that. We don't know who it is yet.

THE COURT: At this point I will sustain the objection.

Q Do you know the name of that person?

A Yes, I do.

MS. COTE: At this point does the Court require us to reveal that name?

(Pause.)

Q Please tell the ladies and gentlemen of the jury what the name of that particular individual is.

A Patricia Thomas.

Q Do you know how Ms. Thomas is presently employed?

A She is a flight attendant for EasternAirlines.

Q Do you know what Ms. McIntyre's job was when she was arrested?

MR. JOY: I object to that.

THE COURT: Overruled.

A Flight attendant for Eastern Airlines.

Q Do you know what if any relationship there is between Ms. Thomas and Ms. McIntyre?

A Yes. They are close friends and at one time they resided together.

MS. COTE: That is all, your Honor.

CROSS-EXAMINATION

BY MR. ANOLIK:

Q Could you please describe this Patricia Thomas a little more for the benefit of the jury?

A Yes. She is five, six to five, seven. About 115 pounds, black hair, attractive girl, hazel eyes.

Q Did you see her in the restaurant?

A Excuse me?

Q Did you see her in the restaurant?

A I'm not positive at this time it was the girl that was in the restaurant. I am not 100 per cent sure.

Q You are just guessing at the present time that it might have been her?

A I have not finished my investigation.

Q I understand that. But it was this week that you started your investigation?

A Actually, yes. Beginning of last week.

Q Beginning of last week?

A Yes.

Q You already knew that this case was supposed to start trial within the next day or so?

A That's correct.

Q Who told you to start this investigation?

A I had a conference with the United States Attorney

Q They told you to look for someone, is that correct?

A No, that's not correct.

Q Please tell me whether or not you started this investigation as a result of any instructions from the superior officer in your department.

A It was not from a superior officer.

Q Which Assistant United States Attorney told you to start the investigation?

A I had a conference with Ms.Cote and from that conference I began an investigation into learning the identity of the girl at the table.

Q Do you know when the indictment in this case came down?

A I do not.

MR. ANOLIK: Could we stipulate as to what the date of the indictment was, Ms. Cote?

THE COURT: The record will show it was June 23, 1977.

MR. ANOLIK: Is that correct?

MS. COTE: I believe the Judge has given it correctly.

Q Were you aware of that in June of 1977 when the indictment came down in this case?

A I was not aware of that.

Q If I tell you --

MR. BELLER: We have stipulated to that.

Q Between June and this past week you did nothing about investigating who that person was, is that correct?

A That's correct.

Q Is there any other description of this young lady that you can give other than you have already given that would distinguish her from any other young ladies?

A She had a nice figure, wore a lot of jewelry, very attractive, hazel eyes, five, six or five, seven.

She had a tan. Her skin was tan or dark at the time.

Q Was she a black person?

A No. I would not say that.

Q Definitely not?

A I would not say definitely. I would say she didn't appear to me to be a black person.

MR. ANOLIK: I have no further questions.

THE COURT: Mr.Joy?

CROSS-EXAMINATION

BY MR. JOY:

Q Have you had a chance to interview this Patricia Thomas?

A Yes, I have.

Q What race is she?

A What race?

Q Yes.

A I believe she's white.

Q She's white?

A I believe.

MR. JOY: No further questions.

THE COURT: Anything further?

MS. COTE: One question or two.

BY MS. COTE:

Q I believe you said you were not 100 per cent sure that the person you saw in the restaurant was Ms. Thomas.

A That's correct.

Q How sure are you?

A Eighty-five per cent.

THE COURT: Anything further?

BY MR. ANOLIK:

Q In other words, you have a reasonable doubt it was her?

MS. COTE: Objection.

THE COURT: Sustained.

Q You have some doubt at the present time?

A Yes.

MR. ANOLIK: I will withdraw the word "reasonable".

THE COURT: Anything else?

MS. COTE: Nothing.

THE COURT: Thank you very much.

(Witness excused.)

MS. COTE: The Government calls Detective Rinaldi.

CHARLES J. RINALDI, called as a witness by the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MS. COTE:

Q Officer Rinaldi, by whom are you employed?

A New York City Police Department.

Q How long have you been with the Police Department?

A Fourteen years in April.

Q What is your present assignment?

A I'm assigned to the New York Drug Enforcement Task Force.

Q Are you in the same unit that Detective Minichiello was once a part of?

A Yes.

Q How long have you been with the Task Force?

A A little over six years.

Q Were you working on April 27th of this year?

A Yes.

Q What did you do on that afternoon?

A That afternoon I participated in the surveillance with a group that I was working with, Group 9, Detective Minichiello was the undercover officer. I was a surveillance officer. He was with an informant. A meeting was set up through the informant to meet a defendant and we proceed uptown. About 5:30 we got uptown.

Q Excuse me. When you say to meet a defendant, are you referring to someone who was a defendant at that time or what do you mean by that word?

A To meet a drug dealer or whatever.

MS. COTE: Your Honor, I request a very short side bar at this time.

(At the side bar.)

MS. COTE: My apologies to the Court. I forgot to turn over Mr. Rinaldi's 3500 material.

THE COURT: No problem. The law requires you give it at the end.

MS. COTE: I wanted to give it beforehand.

(Pause.)

MR. JOY: If you have additional witnesses to save time can you give it now.

(In open court.)

Q Officer Rinaldi, I believe you said you were on surveillance the afternoon of the 27th. At what location were you conducting the surveillance?

A I was parked on 88th Street and First Avenue. I was on the northeast corner.

Q What happened after you set up surveillance that afternoon?

A I was informed that Detective Minichiello via radio --

Q Don't relate the substance of the conversation. Just what you did and what you saw, please.

A About 5:30 I observed Detective Minichiello and the informant walk into Sixish Bar.

Q Where is Sixish Bar?

A It's on 88th and First Avenue. It's on the northwest corner.

Q What did you observe or do after that?

A A short time later I observed a person walking south on First Avenue on the west side of the street enter Sixish Bar.

Q Can you describe that person?

A That person is seated in the courtroom (indicating).

THE COURT: Which person are you talking about?

THE WITNESS: Moses Weindling.

Q What is he wearing?

MR. ANOLIK: We concede identification.

Q What happened after you saw Mr. Weindling enter Sixish Restaurant?

A A short time later I went into Sixish Restaurant myself and I sat at the bar.

Q Did you make any observation relative to your surveillance at that point?

A Yes. I was seated at the front of the bar and I observed Moses Weindling, Detective Minichiello, and the informant seated at a table in the rear of the bar.

Q Was there anything else that happened that afternoon to your surveillance?

A A short time later I observed Moses Weindling leave the bar and come back with Patricia McIntyre.

Q By Patricia McIntyre you are indicating he came back with someone whom you knew the name of at that point in time?

A No. I didn't know Moses Weindling at that time either.

Q Can you point out the person you have identified as Patricia McIntyre, please.

A Yes (indicating).

MS. COTE: May the record reflect --

MR. JOY: I had conceded, your Honor.

Q Approximately what time did Ms. McIntyre enter the restaurant with Mr.Weindling?

A Close to six o'clock.

Q Was there anybody else that you noticed when they came into the restaurant?

A Yes. she had a bicycle with her and they brought it to the rear of the bar.

Q What happened next?

A A short time later -- well, then Moses Weindling and Patricia McIntyre sat at the table with the informant and Detective Minichiello. They were engaged in a conversation which I didn't hear.

A short time later Detective Minichiello and the informant left the bar.

Q What happened after that?

A I left the bar.

Q Did you also work on surveillance the following day, April 28th?

A Yes.

Q Where did that surveillance take place?

A I was parked on the west side of First Avenue, south of 75th Street.

Q Did you have a particular point under observation?

A Yes, that would be the restaurant called "Grass".

Q Did you make any observations during that afternoon?

A I observed Moses Weindling and Patricia McIntyre. Moses was driving a Triumph. He parked on the east side of First Avenue south of 75th Street and went into Grass

Restaurant.

Q Approximately what time was this?

A Must have been about 2:40, 2:45.

Q Did you make any other observations relative to this investigation that afternoon?

A Later on that afternoon, yes.

Q Approximately how much later on?

A About two hours.

Q What did you observe then?

A At that point I observed Detective Minichiello exit the restaurant and then a short time later I observed Detective Minichiello go back into the restaurant followed by Special Agent Sandler, Special Agent Panessa and Detective Daly.

Q What happened at this point?

A I moved my car up and parked outside of the restaurant. I parked on 75th Street.

Q What happened next?

A Detective Daly put Moses Weindling in the back of the vehicle I was driving. He was handcuffed and placed him in the back of the car.

Q After that what happened?

A Moses Weindling then was very upset. He was under arrest. He was handcuffed. He was telling me, you know, that he really didn't know what was going on but he was willing to cooperate with the Task Force or with myself and I told him to be quiet and he be read his rights and he would have the time to cooperate.

Q What happened after this short conversation with Mr.Weindling?

A A couple of minutes later or, I guess it was a few minutes later,Agent Panessa put Patricia McIntyre into the back of the car.

Q What happened after that?

A Then Detective Daly got into the front of the car. Special Agent Panessa also got into the rear of the car and Special Agent Panessa read the defendants their rights.

Q How did he read them their rights?

A He read them off a form, a DEA13.

Q Do you have such a form with you today?

A Yes.

Q Could you please produce it?

MS. COTE: I ask that this be marked for identification.

x (Government Exhibit 6 was marked for identification.)

Q Can you please describe whether or not the defendants, both of them or either of them, made any response during this procedure?

A They acknowledged the rights being read.

Q Can you briefly outline for us what was said by Agent Panessa as he read them their rights?

A He would state to them they had the right to remain silent and they would acknowledge it and he read down the right, that you have a right to have an attorney present and the whole rights themselves he read off the card.

Q Could you briefly give those for the jury?

A You want me to read what he read?

Q Please.

A "Before we ask you any questions, it is my duty to advise you of your rights. Do you understand that you have the right to remain silent? Do you understand that anything you say can and will be used against you in court or other proceedings? Do you understand that you have the right to talk to a lawyer before we ask you any questions and to have him with you during the questioning? If you cannot afford or otherwise obtain a lawyer and you want one, a lawyer will be appointed for you by the United States Magistrate or the Court, and we will not ask any questions until he has been appointed. If you desire to answer now with or without a lawyer you still have the right to stop the questioning at any time or stop the questioning for the purpose of consulting a lawyer."

Q Would you briefly describe again what the response of the defendants, if there was any --

A There is one more. It says: "However you may waive the right to advice of counsel and your right to remain silent and you may answer questions or make a statement without consulting a lawyer if you so desire. Do you understand your rights? Do you elect to waive them?"

Q At this point was anything said by either of the defendants?

A They just acknowledged it. No statements were made.

Q What were you doing at this point?

A I was driving.

Q Exactly where were you driving?

A We were taking the prisoners to the 19th precinct, enroute to the 19th precinct. Moses Weindling was seated behind me. Patricia McIntyre was in the middle and Special Agent Panessa was on the right-hand side.

Q During the course of this drive to the 19th precinct was there any time when you heard either of the defendants say anything other than what you have already related to us?

A Yes.

Q Would you please tell the jury what that was?

A Moses Weindling was quite upset and he was telling Patricia McIntyre that they were in trouble and he said --

MR. ANOLIK: I object unless the exact conversation is given.

THE COURT: Give us the conversation as best as you can recall it.

THE WITNESS: Yes, your Honor.

A He was stating that they were in trouble and she was consoling him to relax and not to worry.

MR. ANOLIK: Your Honor, I object. He has given conclusory statements.

THE COURT: Are you giving us as close as you can come to the language that was used?

THE WITNESS: That's correct.

THE COURT: Go ahead on that basis.

A He stated that, repeating myself, that they were in trouble and she said not to worry, and at this time he was very emotional, almost in tears and she was like kissing him on the side of his face and telling him to relax and he said that they have the pocketbook and she says there is nothing in the pocketbook, and she kept on saying don't worry, relax, relax, and then we got to the 19th precinct to have Patricia McIntyre searched by a policewoman. There was no policewoman there. So from there we had to go to the midtown north, where there was a policewoman, to have Patricia McIntyre searched.

Q If I may stop you briefly: You have related something you overheard that was said between the two defendants. Could you describe the tone of voice or how it was said between them?

A They were talking. Like I said, Moses was very upset. He was very upset.

Q What happened when you arrived then at the second stationhouse?

A Before we arrived at the second stationhouse we were informed to call base, which was our office, which we did. Special Agent Panessa called base. When we arrived at the midtown north, the stationhouse at midtown north, we took Moses Weindling out of the car along with Patricia McIntyre, and I stated to Moses Weindling, "You said you are willing to cooperate," and I said that the cocaine was not back at the -- the office don't have the cocaine. "Where is the cocaine?" He said he left it on the table in the restaurant at Grass.

Q Where did this conversation take place?

A This took place right in front of the stationhouse. Midtown north.

Q Who was present?

A It was myself and Moses Weindling and Special Agent Panessa.

Q Where was Ms. McIntyre?

A She was with Detective Daly just off to the side.

Q What happened after defendant Weindling told you he had left the cocaine on the table?

A We left Moses Weindling and Patricia McIntyre with Detective Daly at midtown north, and myself and Special Agent Panessa went down the Grass Restaurant.

Q What did you do at Grass?

A We searched the restaurant.

Q Were you alone or were there other people involved in this also?

A There was myself, Special Agent Panessa, Investigator Hansen, Detective DeRosa and Detective Campbell.

Q Did you find the three and a half ounces of cocaine?

A No.

MS. COTE: That is all, your Honor.

CROSS-EXAMINATION

BY MR. ANOLIK:

Q Police Officer Rinaldi, is it a fact that you were one of the surveilling officers on the 28th of April?

A Yes.

Q Where were you positioned?

A I think it's in the record that I was south of 75th Street on the west side.

Q I appreciate that there may be something in the record, but I'm now cross-examining you. I would like to have an answer from you.

MS. COTE: Objection to this kind of speech.

THE COURT: Tell us where.

A I will repeat it. I was south of 75th Street on the west side of First Avenue.

Q There is a diagram on the board. I don't know if it has been given a number.

THE COURT: 4.

Q Come up to the board and show us where you were.

A I would be off the board. I would be over here.

Q What street would that be?

A First Avenue.

Q And where?

A 200 feet back.

Q Of 75th Street?

A Yes.

Q Let's assume this is 200 feet. You would be over here?

A Yes.

Q Put your initials there, please.

(Witness complies.)

Q Would it be fair then to say, Police Officer Rinaldi, that you could not see anything that occurred in the bar in the restaurant?

A That's correct.

Q Can you tell us how it came about that you transported Mr.Weindling and Ms. McIntyre --

A I had a broken wrist at the time. My arm was in a case. I could not participate in the surveillance inside the bar or the arrest.

Q Yet you were driving a car?

A That's correct. I was designated the driver.

Q With one arm?

A I refused to stay out sick. This was at my own request.

Q I'm not talking about that. Wasn't it a little dangerous?

A No. It's a hydromatic vehicle. I had a broken wrist for six weeks and worked the entire six weeks.

Q I have some trepidation of framing this question, but are you familiar with the Motor Vehicle rules of the State of New York as to driving cars?

A Some of them. I have not been reviewing them lately.

MS. COTE: Objection for relevancy.

MR. ANOLIK: I will withdraw the question.

Q Police Officer Rinaldi, you said that Mr. Weindling and Ms. McIntyre came into your car.

A They were put into the car.

Q There were other agents or police officers there too, right?

A Yes. Detective Daly and Special Agent Panessa.

Q Was anybody questioning these two individuals?

A No.

Q I know you said somebody read them their rights.

A That's correct.

Q To the best of your knowledge prior to their having been read their rights, do you know whether or not either of them was given an opportunity to make a phone call to any friendly adult or lawyer?

A They didn't make any phone calls.

Q They were not permitted to?

A Not to my knowledge. When they were in the car they were --

Q I'm only asking to the best of your knowledge.

A Not to my knowledge.

Q When you said "You have a right to an attorney", did you say: if you want I will stop the car right now and you can go to that phone booth or a phone booth and make a call to a lawyer?

A No.

Q Did you tell them that?

A No.

Q You say Mr. Weindling was on the verge of tears?

A That's correct.

Q Did any conversation you overheard refer to a quantity of cocaine?

A No. Cocaine was not mentioned.

Q There came a time that you arrived at the 19th precinct, is that correct?

A That's correct.

Q Would you give an estimate to his Honor and the jury how long a period of time it took to get from where you picked up these two young people and brought them to the 19th precinct?

A I don't recall exactly. It had to take at least fifteen or twenty minutes. Between the 19th and midtown north?

Q No, no. I'm talking when you left the scene of the restaurant you went first to the 19th precinct?

A That's correct.

Q How long did it take you to get there?

A Maybe ten minutes.

Q It is not too far away?

A No.

Q Ten minutes.

During that period of time you say you heard some conversation?

A That's correct.

Q That was I take it from your testimony on direct unsolicited conversation. is that correct?

A That's right. Nobody asked them for it.

Q They were talking between themselves?

A That's correct.

Q One of the statements you heard was that there is nothing in the pocketbook, is that correct?

A I didn't say that. He said they have the pocketbook and she said there is nothing in it.

Q So you heard the statement there is nothing in the pocketbook?

A That's correct.

Q Did you also hear Mr. Weindling say that "I left something on the table"?

A He stated it to me later on.

Q How much later on?

A When we were at midtown north.

Q How long was that?

A Maybe another ten minutes or so.

Q So it was twenty minutes later?

A Yes.

Q How long was it before someone went to this restaurant to look for it?

A Well, I was the first one back with Special Agent Panessa. By the time we went to midtown -- by the time we went to the 19th precinct and midtown north, and back to the restaurant, it was a good forty-five minutes.

Q A good forty-five minutes?

A Yes.

Q You didn't make a call to anybody in the field to get over to the restaurant?

A We were the closest ones in the field.

Q You were the closest ones?

A Not really. We might have been the closest ones because besides myself responding, there was also Investigator Hansen and Detective DeRosa and Detective Campbell. So there was actually two units responding to the restaurant.

Q Can you tell me, if you know, whether or not an arrest warrant had ever been issued for Mr.Weindling or Ms. McIntyre?

MS. COTE: Objection, your Honor. It is not required.

MR. ANOLIK: Your Honor, I am not saying that --

THE COURT: I will sustain the objection.

Q Can you tell me whether or not you had any conversations with any officers as to what was said to either Mr. Weindling or Ms. McIntyre at the time they were arrested, as to the reason for their arrest?

A I was not there at the time of their arrest. I knew why they were arrested.

Q You told the Court that they were read their rights.

A That's correct.

Q Did they read them their rights with reference to something?

A They were arrested for violation of narcotics laws.

Q What was said to them other than reading them their rights?

A I don't know what was said when they were placed under arrest.

Q In other words, all you heard was in a vacuum certain rights being read to them, is that correct?

A Well, not in a vacuum.

MS. COTE: I object to the form of the question.

THE COURT: Sustained.

Q I am trying to find out whether or not the two defendants here were apprised or oriented why their rights were being read to them.

A Moses Weindling --

Q While you were there.

A I don't recall.

Q So you have no recollection other than the fact that the rights were read, is that correct?

A Yes.

Q Did you hear any conversation,you now, addressed to either of these defendants or both of them, "Do you know you have been arrested for such and such a crime"? Anything of that sort said to them?

THE COURT: In your presence.

A I might have told Moses when he first got into the car.

Q You might have. You might have done anything. I want to know what you did.

A To the best of my recollection I did inform him. He was in the car with me a couple of minutes carrying on about wanting to cooperate and I am telling him to keep quiet,before they put Patricia McIntyre into the car.

Q You were there alone with him?

A That's correct.

Q Is there any bar between you and him?

A No, no bar.

Q You are a one-armed detective at that point?

A That's correct. He's in cuffs complaining that they are too tight.

Q Of course his feet are not in cuffs?

A No.

Q Tell me what your conversation was at this point.

A He told me that he worked once before, that he cooperated once before and that he was willing to cooperate again. That he was in trouble in the Army and he worked with the officer in the Army, and that he was willing to do it again.

Q Did he also tell you he was a user of cocaine?

A I don't think at that time I got into it.

Q Did you then tell him, "You know Moses, you have been arrested for use of cocaine"?

A Not for use of cocaine.

Q What did you tell him?

A He was violating -- for the Federal narcotics laws.

Q That encompasses a broad spectrum of things.

A That's all we state when we lock them up. We don't give him specification as to what time and place.

Q All he knew it was that a violation of the narcotics laws?

A Yes.

Q And then someone read his rights to him?

A That's correct.

Q Was Ms. McIntyre told the same thing?

A I don't know what Ms. McIntyre was told. She didn't get into the car right away. She was placed in a couple of minutes later.

Q Did you make out a report of this incident?

A No.

Q You didn't? I would like to show you 3502A for identification. Read it to yourself. Tell me whether or not you signed that.

(Pause.)

A Yes, I did.

Q Is that a report you made out?

A On the 27th that took place. You are talking of the 28th.

MS. COTE: Objection, your Honor.

THE COURT: That objection is sustained.

MR. ANOLIK: I'm asking about any report.

THE COURT: Let's be clear. I thought you were in the framework of the 28th, and whether there was a report about the incident in the car.

MR. ANOLIK: May I explain what my next question was going to be. My next question was: Did you make out a similar report for the 28th? That's all I was going to ask him. I wanted to identify what sort of report I am talking about.

Q Did you make out a similar report for the 28th?

A There is no similarities. This is a surveillance report and on that day there was an arrest report made. I didn't make out the arrest report.

Q In other words, your answer is that you did not make out such a report?

A That's what I stated, yes.

MR. ANOLIK: That's the reason I showed them this in advance.

Q You made no report in writing of conversations that you had with the defendant who had been arrested for a violation of the narcotics laws?

A That's correct.

Q You made no memorandum of statements he allegedly made to you?

A That's right.

Q What you have told us in court you did not reduce to writing?

A That's correct.

Q You never made a written report about it?

MR. BELLER: Asked and answered four times.

THE COURT: Sustained.

Q Did you ever make a report to the United States Attorney about this?

A In writing, no.

Q When was the first time you ever told anybody about this?

A It was common knowledge that day. I told the case agent and other agents that I worked with.

Q But you made nothing in writing?

A No.

Q As a matter of fact as a patrolman, aren't you required to keep a memo book?

A No.

Q The New York City Police Department does not require patrolmen to keep memo books?

A Not in the New York Drug Enforcement Task Force. We are not allowed to.

Q You are not allowed to?

A The Government doesn't allow us.

Q The Government of the State, of the City, of the United States, which Government?

A The Government. The United States Government.

Q Who in the United States Government?

A I don't know who.

Q It was not Mr. Nixon, was it?

A I don't know.

Q Who was it?

MS. COTE: Objection, your Honor.

A How would I know. I don't know that.

THE COURT: The question has been answered.

Q Let me ask you this: Going back to 3502A, which is the report of the 27th, that is the surveillance report, right?

A Yes.

Q Did you make any field notes of this?

A No.

Q You just memorized what had happened and wrote it down and typed it?

A I don't. I don't type it. A secretary types it.

Q Did you make any written notes?

A There is a copy of that that I wrote, handwritten.

Q Where is that?

A Just a copy of that.

Q Where is the handwritten copy?

A That was destroyed after it is reproduced in typing.

Q Is that because the Government told you to destroy it?

A It's just policy.

Q Just policy?

A Yes.

Q There is no policy against you making this report, but there is a policy against your making a report on the 28th, is that correct?

A Counselor, could I just clear the record?

Q I would love you to.

A A memo book is required by a New York policeman to be carried. A person assigned to the New York Drug Enforcement doesn't carry a memo book. We fill out a DEA17, which is a daily activity sheet. On that sheet we do not put any material as to statements or anything else.

Q You are a trained police officer?

A That's correct.

Q When a statement is made by a defendant you are aware of the possibility that statement at some future time may become relevant if this defendant should be prosecuted?

A That's correct.

Q You know that as a trained police officer, don't you?

A That's correct.

Q Isn't it important then to remember the exact words that were said?

A That's correct.

Q How many cases have you worked on between the arrest and testifying in this courtroom, how many cases?

A Maybe thirty, forty cases.

Q In none of those cases have you made any reports with respect to statements or anything of that sort?

A When I'm the case agent I do, yes.

Q Only when you are the case agent?

A That's correct.

Q When was it for the first time you discussed your testimony that you have been giving in this courtroom with any United States Attorney?

A About two weeks ago.

Q At that time you told them what the statements were that were allegedly given by the defendant?

A That's correct.

Q Prior to that time you had not told them?

A No.

Q You had no memorandum in writing even for your own use as to what was said?

A No.

Q You are telling this jury that you remember exactly what was said on that occasion, is that your testimony?

A My testimony was to the closest possible of my recollection, yes.

Q This being almost the end of October and the arrest took place April 28th.

A Yes.

MR. ANOLIK: I have no further questions at this time, your Honor.

CROSS-EXAMINATION

BY MR. JOY:

Q Officer Rinaldi, how long have you been assigned to the Task Force?

A A little over six years, counselor.

Q Do you have any female agents in the Task Force?

A We do now.

Q On the 27th at what time did you arrive at The Sixish Bar?

A It was shortly before 5:30, maybe a quarter after.

Q Was that before or after Minichiello and Steven arrived?

A That was before.

Q Did you have a meeting during that day to decide where you were going to be an what they were going to do?

A Well, we really didn't know where we were going to be. There was a phone call made from the field. We did have a brief meeting before we left the office.

Q How did you know to go to The Sixish Restaurant?

A I was told via radio.

Q Was this a radio communication from Detective

Minichiello?

A No.

Q Did the radio communication tell you that Minichiello and Steven would be going to the bar?

A Yes.

Q When you arrived you sat at a table, is that correct?

A No, I sat at the bar.

Q How long afterwards did Steven and Minichiello arrive?

A No. I was seated in the car before they arrived. I went in after they arrived, after --

Q You were in the car outside?

A Yes.

Q When they came by did you talk to them?

A No.

Q You followed them in, is that right?

A No. I stayed in the car until Moses came.

Q You went in after Steven and Minichiello went in?

A Yes.

Q You sat at the bar and they were seated at a table?

A Yes.

Q You had a number of drinks while you were in the bar?

A I had one drink.

Q Only one drink?

A That's correct.

Q How long did you stay in the bar?

A Well, I went into the bar after about five or ten minutes after Moses Weindling went into the bar. I think I was in the bar about a half hour.

Q It was a half hour before Weindling came in?

A Counselor, Detective Minichiello and the informant went in first. A short time later Moses Weindling went in. A short time after that I went in.

Q So the three of them were in the bar when you went in, is that right?

A That's correct.

Q About what time was that?

A The time that I went in?

Q Yes.

A It must have been close to six o'clock.

Q What time did you leave?

A About 6:30 or so.

Q In what sequence did you leave? Had Steven, Minichiello, Weindling, or McIntyre left at that time?

A I left after Minichiello and the informant left.

Q That was about 6:30?

A That's correct.

Q Where did you go?

A I went back to the vehicle and drove back to the office.

Q Did you meet with Minichiello that evening?

A Yes.

Q Who else was present at that meeting?

A Special Agent Sandler.

Q You only had one drink when you were in the bar, is that right?

A To the best I recall. I might have had two.

Q Could have been three?

A No.

Q Was there any reason why you put on your expense account it was three?

A It might have been three.

Q Could it have been four?

A I would have to look at my expense account.

Q You put in a voucher to get reimbursed for these drinks?

A Yes.

Q What were you drinking?

A Scotch and soda. Johnnie Walker Red and soda.

Q There came a time the next day when you went on surveillance between 74th and 75th on First, is that right?

A That's correct.

Q You had a meeting first, did you not?

A Yes.

Q Who was at that meeting?

A There was Special Agent Sandler and Panessa, Detective Minichiello, and the informant.

Q There was also Officer Hansen, was there not?

A I think Hansen -- to the best of my recollection, Hansen and Campbell were not there. They were out in the field already.

Q I believe you testified that there came a time when you went back to the restaurant, back to The Grass Restaurant, after the defendants were in custody, is that right?

A That's correct.

Q That was something like 45 minutes after they had been in custody?

A That's correct.

Q When you got back to the restaurant was it still operating?

A Yes.

Q WEre there people in the restaurant?

A Yes, there were people in the restaurant.

Q As a matter of fact, the table had been cleared, had it not?

A Yes.

Q Do you know what table the defendants and Minichiello were sitting at?

A I was not inside the bar.

Q You went back to the bar?

A Yes.

Q I take it somebody told you where they were sitting?

A Special Agent Panessa went to the rear of the bar. I went with him. He went to a table in the back. We searched the area.

Q Was Panessa in the bar during the course of the afternoon?

A Yes.

Q When was he in the bar?

A I think at the beginning of the afternoon.

Q When you went back were there people sitting at the table that Panessa said the defendants were sitting at?

A No.

Q But it was cleared, was it not?

A Yes.

Q In addition to yourself on the 27th, were there any other agents in the surveillance team that night?

A Sandler, Special Agent Sandler, and Detective Daly.

Q Where were they that night?

A I don't recall. They were in the vicinity, but I don't recall where.

MS. COTE: Pardon me, your Honor. I'm afraid I missed exactly what date and time we are talking about.

MR.JOY: We are talking about the 27th.

MS.COTE: Thank you.

Q When you got back to headquarters on the 27th were Sandler and Daly there?

A I know Sandler was there. I don't know if Daly was or not.

Q They were in another car, is that right?

A That's correct.

Q Were they in the same car?

A They were together, right.

MR. JOY: I have no further questions.

THE COURT: Anything else?

MS. COTE: The Government has no questions of this witness.

THE COURT: Thank you very much.

(Witness excused.)

MS. COTE: The Government calls Special Agent Sandler.

MR. ANOLIK: Can we approach the bench?

3500 material, please.

THE COURT: Delivered herewith is 3500 material on Sandler.

(In open court.)

FRED SANDLER, called as a witness by the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MS. COTE:

Q Special Agent Sandler, where do you work?

A I work for the Drug Enforcement Administration.

Q What position do you hold?

A I am a special agent.

Q How long have you been with Drug Enforcement Administration?

A Approximately five and a half years.

Q During that time have you worked in an undercover capacity ever?

A Yes, Ma'am.

Q Were you working on April 28th of this year?

A Yes, I was.

Q Did there come a time during that day when you took custody of a briefcase?

A Yes, there did.

Q Let me show you what has been marked as Government Exhibit 3 for identification. Please look at it carefully. Tell me if you recognize it.

A Yes, I do.

Q How do you recognize it?

A This was the briefcase that was given to me by Detective DeRosa on that date.

Q Where did you receive custody of it from Detective DeRosa?

A In the processing room of our office, 555 West 57th Street.

Q Is there anything about that briefcase that makes you sure it is the briefcase you received?

A Yes. It has my evidence markers on it and this is the briefcase I received that day.

Q Was anyone else present besides Detective DeRosa at the time you received that briefcase?

A Yes. I believe Investigator Hansen was there.

Q Describe what happened to the briefcase at this time, please, when you received it.

A When I received the briefcase we opened it looking for cocaine.

Q How did you open it?

A It was opened with a screwdriver.

Q Let me give you my pen and ask you at this time to break the seals on the briefcase.

MS. COTE: May the record reflect they are being broken.

Q Will you remove the contents of the briefcase, please.

(Witness complies.)

Q I believe you have taken out seperate packages.

A Yes.

Q How much?

A Three.

Q Is there one of those packages marked as Government Exhibit 3A?

A Yes, Ma'am.

Q Please hold that up.

(Witness complies.)

Q Do you recognize what is contained in the package called Government Exhibit 3A?

A Yes, I do.

Q Where did you first see what is contained in there?

A In Mr. Weindling's briefcase.

Q How do you recognize it as something that was first i Mr. Weindling's briefcase?

A I remember it being in the briefcase at the time and then the briefcase was stored in non-drug evidence in my office.

Q What are the contents of that package that you just raised and which is labeled as Government Exhibit 3A?

A A cocaine strainer and --

MR. ANOLIK: Objection to the adjective. It's a strainer, your Honor.

THE COURT: At this point it's a strainer.

A A strainer and another cylindrical object, a golden one.

Q Do you know from your experience as a drug enforcement agent what that gold cylindrical object is commonly used for?

A Yes.

Q Tell the jury what it is commonly used for.

A It can be used to snort cocaine.

Q Do you know if that strainer would have any use -- and again from your experience in drug enforcement work -- for anyone who is a drug dealer?

A Yes, it does.

Q Please describe its use to the jury.

A It can be used to mix narcotics with dilutants or it can be used to break down narcotics into. cocaine or heroin in rock form,and break it down to powder form.

Q Were you instructed to have these two items taken to a chemist and have them analyzed?

A Yes, I was.

Q When approximately did you do that?

A Approximately a week ago.

Q Did there come a time when you received them back?

A Yes.

Q What did you do when you received them back?

A I handed the report to you and I collected the evidence and brought it into the Southern District for safekeeping.

Q Did there come a time when you put it once again into the briefcase?

A Yes, i did.

Q Please take out the envelope that has been marked as Government Exhibit 3B.

A (Indicating).

Q Do you recognize that?

A Yes, I do.

Q What is that?

A Several clear plastic baggies, small manila, yellow manila bags, a strainer, a small cylindrical object with a hollow in it, a cork-type hollow, a green cylindrical object, and a straw.

Q When did you first see these objects?

A Again it was the same time I had seen the other objects when I first opened the briefcase.

Q Is there another bag that you have yet to discuss, Government Exhibit 3C?

A Yes, Ma'am.

Q Please hold that up.

A (Indicating).

Q Describe when you first saw that.

A Also at the same time. All these objects were together.

Q Were any of those objects in the three evidence bags that they are now in?

A No, Ma'm. I put them in myself.

MS. COTE: At this time, your Honor, I offer Government Exhibit 3, which is just the briefcase without its contents in evidence.

THE COURT: Any objection?

MR. ANOLIK: Your Honor, I object. I object on the grounds -- I don't object to the fact that he found it there, but I object to the connotation of what they are.

THE COURT: She has offered only the briefcase at this point.

MR. ANOLIK: The briefcase I have no objection to.

THE COURT: The briefcase will be received.

(Government Exhibit 3 was received in evidence.)

MS. COTE: At this point I offer Government Exhibits 3A and 3B for identification into evidence.

MR. ANOLIK: I would have no objection as long --

MR. BELLER: If this is going to be a special objection, perhaps we can approach.

THE COURT: Is there an objection?

MR. ANOLIK: There is no objection if we merely designate this was found in the bag.

MS. COTE: I don't know what the restriction on that means.

THE COURT: Based upon the testimony that we have heard, do you have any objection to its admissibility?

MR. ANOLIK: I have objection on 3A, and I would like to approach the bench and show you why.

(At the side bar.)

MR. ANOLIK: The label, I don't want this in.

MS. COTE: As Special Agent Sandler testified, this was submitted to the chemist. This is the results of the chemist's analysis in this small glass container which has the chemist's initials on it.

MR. ANOLIK: Was the container found in his bag? I want that clear.

MS. COTE: It was not found.

MR. ANOLIK: That is what I want to make sure. They made think it is part of it.

THE COURT: Is there any way --

MS. COTE: The chemist will be coming as the next witness to testify. Perhaps I should offer this in evidence at that time.

THE COURT: Do that.

MR. ANOLIK: That will be okay then.

(In open court.)

MS. COTE: Can I take it there is no objection to Government Exhibit B?

MR. ANOLIK: No.

(Government Exhibit 3B was received in evidence.)

MR. BELLER: We will withdraw the offer with respect to 3A.

THE COURT: I understand.

Q I would like you to go through the objects contained in Government Exhibit 3B now in evidence, Special Agent Sandler, and describe to the jury what, from your experience, any of the objects might be used for in drug-related activity.

A On many occasions these clear plastic --

MR. ANOLIK: I object. I don't think he has been qualified yet. I would like to have a voir dire on his qualifications.

THE COURT: Let's see if an appropriate foundation can be laid.

I will sustain the objection.

Q How long have you been involved in drug enforcement work?

A Five and a half years.

Q During the course of those five and a half years approximately how many cases have you worked on involving cocaine trafficking?

A Over 100.

Q During the course of those 100 cases, have you had opportunity to observe what is the common drug paraphernalia associated with cocaine trafficking?

A Yes.

Q During that five and a half years of drug enforcement work have you also had experience to view the paraphernalia associated with either heroin trafficking or -- let me restrict it to heroin trafficking.

A Yes.

Q You are familiar with the paraphernalia used by such people?

A Yes.

MS. COTE: Is there any objection?

MR. ANOLIK: I object to anything regarding heroin.

THE COURT: Put your next question.

Q Have you ever had any experience with any other drugs besides cocaine or heroin in your five and a half years?

A Yes, I have.

Q What other drugs are those?

A Marijuana, speed, pills, hallucigens.

Q From that experience are you able to identify the objects contained in Government Exhibit 3B as being associated in any way with cocaine trafficking?

A Yes, I am.

Q Please describe that to the jury.

A These clear plastic baggies contained in Exhibit 3B are very often used to contain narcotics, basically heroin or cocaine.

The strainer is often used, which I described before, to either break down cocaine rocks or heroin rocks into powder form or to be mixed, narcotics with dilutants.

The straw can be used to snort cocaine.

The brown bags can be used to hold the powder also.

The cylindrical object can be used to hold a small amount of cocaine or heroin.

Q When you refer to the cylindrical object, I see two cylindrical objects in here besides the straw. One is a clear plastic one and one is a smaller green object. Which one were you referring to as something that can be used to hold or contain cocaine or other substances?

A The larger of the two. The green cylindrical object which is hollowed out can be used also to snort cocaine.

Q What happened after you opened Mr.Weindling's briefcase and found these objects within it?

A The briefcase was closed up and placed into evidence.

Q Did there come a time on that same day when you interviewed Moses Weindling?

A Yes.

Q Do you see him in the courtroom today?

A Yes.

MR. ANOLIK: We concede the identification.

Q What time did this interviewing process take place?

A It was after the arrest. I would say some time between 5:15 and 5:30, at my office.

Q Where are your offices located?

A 555 West 57th Street.

Q Prior to your interviewing Moses Weindling, did you say anything to him?

A Yes, I gave him his constitutional rights.

Q How did you do that?

A From a card that I have.

Q Do you have a card with you?

A Yes, I do.

Q Please produce it.

(Pause.)

Q If you are having trouble getting it out, perhaps we can have the marker placed on it.

Let me show you what has been marked as --

A I have it. Here it is.

(Government Exhibit 7 was marked for identification.)

Q Would you please describe the process you followed at the point at which you gave Mr. Weindling his constitutional rights?

A I read him his rights and after each question I asked him if he understood, and he answered affirmatively and I continued on.

Q Could you please --

MR. ANOLIK: Are we talking only about Mr. Weindling?

THE COURT: This is at 5:15 to 5:30 somewhere in the office.

THE WITNESS: That's an approximation of time. In the processing area.

Q Read for the jury the constitutional rights you gave Mr. Weindling.

A "Before we ask you any questions, it is my duty to advise you of your rights. Do you understand that you have a right to remain silent? Do you understand anything you can say will be used against you in a court or other proceedings? Do you understand that you have the right to talk to a lawyer before we ask you any questions and to have him with you during questioning? If you cannot afford or otherwise obtain a lawyer and you want one, a lawyer will be appointed to you by the United States Magistrate or the Court, and we will not ask any questions until appointed. If you decide to answer now with or without a lawyer, you still have a right to stop the questioning at any time or stop the questioning for the purpose of consulting a lawyer".

Q Is that it?

A "However you may waive the right to advice of counsel and your right to remain silent and you may answer questions or make a statement without consulting a lawyer, if you so desire.

"Do you understand your rights? Do you elect to waive them?"

Q What did he say in response?

A He answered affirmatively that he understood his rights and he knew he had a right to a lawyer, and right down the line.

Q After this process, did you and Mr.Weindling have a discussion regarding the source of the three and a half ounces of cocaine?

A Yes, we did.

Q Would you please tell the jury what you said to him and what he said to you?

A He stated that he had met with --

MR. JOY: I object to this as to my client.

THE COURT: Do you wish me to make an instruction to the jury?

MR. JOY: Yes.

THE COURT: Ladies and gentlemen, this testimony is not in the presence of Ms. McIntyre and therefore it is to be considered by you only on the issues as to Mr.Weindling.

MR. JOY: May we approach the bench?

(At the side bar.)

MR. JOY: So I can be sure there is no Bruton problem as far as what this witness is going to say, could we have an offer of proof as far as the Government understands what his testimony is going to be.

MS. COTE: The defendant will say that he got the cocaine from a Cuban on the West Side by the name of Jose, and he gave that Cuban $2800. He will say he had accomplices in the restaurant and that he in fact handed over a sample to Detective Minichiello on both the

27th and the 28th.

MR.JOY: The accomplices in the restaurant cause me a problem because that infers my client is the accomplice. As far as she is concerned, that causes a Bruton problem.

MR. BELLER: We will stipulate that the accomplices he referred to didn't include your client.

MR. ANOLIK: We won't stipulate to that. It presupposes the existence of someone not yet identified.

MR. BELLER: We are willing to stipulate that it does not refer to McIntyre.

MR. ANOLIK: Why should I put my guy in concert with anybody else?

MR. BELLER: You have no objection here.

MR. ANOLIK: My argument is that it is not Ms. McIntyre.

MS. COTE: In the context, your Honor, it was clear since both Ms. McIntyre and Mr. Weindling had been arrested that he was referring to others at that time unknown to the Government.

MR. ANOLIK: That's for the jury to decide.

MR. BELLER: The objection here, as I understand it, is from Mr. Joy that the phrase "accomplice" might implicate his client. We are willing to stipulate that the

Government doesn't contend that the accomplice to which he referred was Ms. McIntyre. If Mr. Anolik wants to argue in his summation that the accomplice he meant was not Ms. McIntyre, that's up to him. If he thinks that helps his case in any --

MR. ANOLIK: What right do you have to stipulate?

MR. BELLER: Mr. Joy said he has a problem. We are willing to eliminate it.

MR. ANOLIK: You are putting a connotation on what my client meant.

MR. BELLER: We have a right to say what we contend. We don't contend that the accomplice to whom he referred was Ms. McIntyre.

MR. ANOLIK: Do that during summation.

THE COURT: Is it agreeable to you?

MR. JOY: Under what form?

MS. COTE: The Judge could instruct the jury to that effect.

MR. BELLER: Exactly.

THE COURT: This is a good time for a break.

(In open court.)

THE COURT: Ladies and gentlemen, we will take our recess.

(Jury leaves the courtroom.)

THE COURT: So I am clear on this, I gather counsel that Bruton speaks in terms of excising something from an implicating statement where it affects a co-defendant, and on this stage of the record the co-defendant cannot cross-examine the maker of the statement.

MR. ANOLIK: Correct.

THE COURT: It seems to me that as far as you and Mr. Joy are concerned, Ms. Cote, you are in good shape with such a stipulation. I am not so sure, however, that Mr.Anolik is not correct that he may by your stipulation with Mr. Joy put a cast upon language that his client is alleged to have uttered.

MR.JOY: The preferable route would be to take that reference out.

THE COURT: That may be the way the knot has to be resolved. Unfortunately the problem is caused by the fact that it is clear he is not talking about Mr. Joy's client because, as I understand from earlier argument to me, he exculpates her altogether.

MR. ANOLIK: They don't want that in. If they put that in it would be something else.

MR. BELLER: As I recall the cases, United States versus Wingate, I think is one, and there is another one that escapes my memory at the moment, we would be perfectly entitled to say if he, for instance had said, "You know, my accomplice McIntyre was in the restaurant with me", we would be entitled to say, to redact that -- that would be a real Bruton problem -- we would be entitled to say there was another person in the restaurant with him. As long as the redaction is such that the person's name is removed --

THE COURT: Wingate?

MR. BELLER: I have a memo we submitted in United States versus Alvarez. Maybe we can get that.

This seems to me to be an instance where that redaction is already taken care of in the witness' statement. He is going to say Weindling told me there were in effect other people or another person, an accomplice, or accomplices, in the restaurant. It seems to me that even if it meant McIntyre, we would be entitled to say that under Wingate -- and here we are willing to meet Mr. Joy's problem --

THE COURT: Can you get that volume quickly and I will have a chance to look at that?

MR. BELLER: I will do that immediately.

THE COURT: Do you know the citation?

MR. BELLER: Not offhand. I would say it is within a year and a half, the last year and a half.

(Recess.)

MS. COTE:. The Government will instruct the witness, your Honor, not to include in his testimony that section where he says he had the three and a half ounces --

THE COURT: What is the anticipated testimony of this?

MS. COTE: That he would say in describing his own activities that he had three and a half ounces brought to the restaurant,implying to Grass Restaurant, on the 28th.

THE COURT: You are going to say there is no contention that Ms. McIntyre is the one who brought it?

MS. COTE: No, your Honor.

MR. JOY: I thought you were going to eliminate that testimony.

MS. COTE: What I am saying is that the Government --

THE COURT: What's the rest of it?

MS. COTE: The rest of it is that he purchased the cocaine from a Cuban named Jose, who lived on the West Side, who he is afraid of; that he still owes the guy $2800; that he handed over two samples, one on the 27th and one on the 28th, and that he left the three and a half ounces or the cocaine on the table.

THE COURT: That's the testimony you anticipate will be?

MS. COTE: Yes.

THE COURT: Mr. Joy, you have no problem with that.

MR. JOY: Just to make sure I understand that part of the testimony that says he had somebody bring it to the restaurant, that is going to be excised or not included?

THE COURT: You have no problem with that.

MR. ANOLIK: Not as far as it goes.

THE COURT: Not given the Bruton situation.

MR. ANOLIK: Of course I am going to cross-examine him with respect to credibility.

THE COURT: That's another matter.

Bring the jury in.

(Jury present.)

(At the side bar.)

MS. COTE: Mr. Beller did not instruct the witness. I have not had an opportunity to tell the witness.

MR. BELLER: Right now --

MR. JOY: I will open the windows and he can go out the back door.

(Pause.)

(In open court.)

Q Special Agent Sandler, I believe you were at the point in your testimony where you had described to the jury the process by which you informed defendant Weindling of his rights.

A Yes.

Q After that was there any conversation between you and defendant Weindling?

A Yes.

Q Would you please tell the jury what it was to the best of your recollection what you said to him and what he said to you?

A I asked him what happened during this investigation. He said he had met with Tony the day before, that was the 27th, and on the 28th, and on both days had given Tony a sample of cocaine.

He then stated there were three and a half ounces in the restaurant that day for sale to Tony.

He admitted getting this cocaine from an individual --

MR. ANOLIK: If it's possible to remember the exact words I prefer it.

THE COURT: If you can give the exact words, do that. If not give us the substance.

A He said he got the cocaine from Jose who was a Cuban who lived on the West Side of New York, and that he owed Jose $2800 in cash for the cocaine.

Q Did he say anything relative to his briefcase?

A Yes. In the processing room he inquired why his briefcase had been opened from a locked position. He also stated to me -- I asked him where the cocaine was since we could not discover it. He said that it was on the table during his arrest.

Q Was defendant Weindling at the offices at the time that you first opened up his briefcase?

A No, he was not.

Q Let me direct your attention to the following day, the 28th of April. Were you present during an interview with Moses Weindling on that day?

A Yes, I was.

Q Where did that take place?

A In AUSA McNamara's office.

Q Who was present during that interview?

A Myself, defendant Weindling, his lawyer at that time, and AUSA McNamara.

Q Did AUSA --

THE COURT: That is Assistant United States Attorney.

Q Did Assistant United States Attorney McNamara begin to interview Mr. Weindling by informing him of his rights?

A Yes.

Q During the course of that interview that followed that process, did Mr.Weindling give his home phone number?

A Yes.

Q Do you remember what that phone number was?

A Not offhand.

Q But did you know it at that time?

A Yes, I did.

Q Did Assistant United States Attorney McNamara make notes of the interview as it went along?

A He did.

Q Did those notes include defendant Weindling's home phone number?

A Yes, they did.

MS. COTE: May I have this marked for identification, please.

(Government Exhibit 8 was marked for identification.)

Q Directing your attention to the second page of what has been marked as Government Exhibit 8 for identification, please look at that page, read it to yourself, or that portion of it which would refresh your memory as to whether or not defendant Weindling gave his home phone number.

A Yes. I can see it printed here.

Q Tell the jury what that home phone number was.

A 534-4089.

MS. COTE: No further questions.

CROSS-EXAMINATION

BY MR. ANOLIK:

Q Agent Sandler, would you tell me whether or not you were assigned to this case by your department at any point in time prior to the 28th of April?

A I think assigned would be a bad word, counselor.

Q Why don't you correct me. How did you come to participate in this arrest?

A The information I received from an informant.

Q Would that be the informant who was accompanying Mr. Minichiello?

A Yes, sir.

Q What was his first name again?

A The informant?

Q Yes.

A Steve.

Q Would it be also fair to say that Steve was a person who could be described as a cooperating individual?

A Yes, sir.

Q Can you tell me whether or not he himself, Steve, whether he had been charged with any crime?

A In this case?

Q In any case.

A Yes, I believe he had.

Q Would it be fair to say that it was the reason he was cooperating?

A No, sir.

Q There was another reason?

A Yes.

Q Can you tell me whether or not he was ever prosecuted for crime for which he was charged?

A I believe that case is still pending.

Q That's since at least April of this year?

A Yes, sir.

Q Did there come a time that you went to the vicinity of the Grass Restaurant during the 28th of April 1977?

A Yes,sir.

Q Were you inside the restaurant?

A Yes, sir.

Q What time do you believe you arrived there?

A Approximately ten minutes before the undercover and the informant arrived. I would say approximately 2:20.

Q Had you had a meeting prior to arriving there with other agents?

A Yes, sir.

Q Where was the meeting?

A My office.

Q Would it be fair to say that you were in charge of this operation?

A Partially in charge would be a better statement.

Q Could you be described as the supervising agent?

A No.

Q It was someone else?

A Yes.

Q Who was that?

A Special Agent Panessa.

Q Was that a superior of yours?

A Yes, sir.

Q Was he on the scene as well?

A Yes, sir.

Q I believe that you did make a report, did you not, of your activities in connection with this case dealing with the 28th of April, 1977?

A Yes, sir.

Q I show you 3506D. Look at it yourself and tell me whether this appears to be a copy of your report?

A Yes, sir, it does.

Q Did you make any field notes?

A No, sir.

Q Did you make any notes at all?

A No, sir.

Q When did you sign this report?

A Several days after I wrote -- let me ask you this: when you say I made notes, you mean on the day of the 28th?

Q Yes.

A While I was on surveillance?

Q Yes.

A I did not make any notes.

Q Did you make any notes yourself shortly thereafter?

A I made a report.

Q This report?

A Yes, sir.

Q I'm talking about did you make any notes in your own handwriting?

A No, sir.

Q You testified that Mr. Weindling made certain statements to you?

A Yes, sir.

Q Did you write down those statements as he made them?

A No, sir.

Q Did you record them?

A No, sir.

Q Do you know whether or not --

A I recorded them in my report.

Q It's probably my fault. When I say "record" I am thinking of electronic recording.

A No, sir.

Q Do you know if any electronic surveillance -- and I'm talking about a tape recorder, a Nagra tape, a miniphone,a parabolic microphone or anything of that sort was used in connection with this case?

A Do I know if it was used? The answer is yes, sir.

Q Did you, as a result of such use get any recordings of Mr. Weindling?

A No, sir.

Q Did you get any recordings of Ms. McIntyre?

A No, sir.

Q I show you this report and ask you if by looking at it you can tell when you signed the report.

A I can tell you the report was made on May 2, and that it was before my supervisor May 10, so some time between May 2 and May 10, I would have signed it.

Q So it could have been May 9 or May 3?

A Yes.

Q But first it would have to be transcribed by a typist?

A Yes.

Q So it's more likely closer to May 10 than May 3?

A No, sir.

Q It could have been any time between those dates?

A Yes, sir.

Q But in the meantime between April 28 when you had the conversation you said with Mr. Weindling and May 3, you had no notes to refer to as to what he had said?

A That's correct.

Q Can you tell me what day of the week the 28th was?

A I don't recall.

MR. ANOLIK: May I consult my diary, your Honor, and ask your Honor to take judicial notice.

Q If I were to tell you April 28, 1977, was a Thursday, would that refresh your recollection?

A No, sir. But I believe you.

MR. ANOLIK: May the Court take judicial notic of that fact.

THE COURT: Yes.

Q Do you know whether or not you worked on the 29th?

A Yes, I did work.

Q Was that on some case?

A Well, without looking at my daily records I could say I worked partially on this case that day.

Q Is it customary not to take notes of conversations where a suspect in a case allegedly gives a statement that may be used against him?

A It is my procedure not to take notes.

Q When you say "your procedure", is it the procedure of the United States Government that you cannot take notes?

A I believe you can, to the best of my knowledge, take notes. I believe it is our policy not to take notes.

Q Do you know whether or not everybody assigned to the Joint Drug Task Force is instructed not to take notes of such things?

MR. BELLER: Are we talking about the daily report that the previous witness testified about?

THE COURT: Specific notes --

MR. ANOLIK: With respect to statements of prospective defendants.

THE COURT: This is a statement of the interview --

THE WITNESS: Repeat the question.

Q Is it a policy of the Joint Task Force that their agents are not to take notes, not to preserve records in writing?

A That's not a policy, to the best of my knowledge.

Q If someone said it was a policy he would be mistaken?

MR. BELLER: There is no such testimony, your Honor.

THE COURT: Objection sustained.

Q By the way, were you present in the restaurant itself when the arrest was made?

A No, sir.

Q Where were you?

A I was across the street.

Q So you did not actually see the physical arrest of the individuals?

A That's correct.

Q Could you tell us when it was for the very first time so far as you know that the defendant Weindling was given his constitutional rights, so-called Miranda warnings?

A When he was placed into the Government vehicle.

Q The Government vehicle being your vehicle?

A No, sir.

Q How would you know that he was given his rights at that time?

MS. COTE: Your Honor, this is really argumentative.

THE COURT: I sustain that objection.

Q You made a statement. I am wondering on what you base the statement. Did someone tell you?

A Yes,sir.

Q In other words, you were not present?

A That's correct.

Q Did you have anyone else with you when you interviewed Mr. Weindling at your office?

A Yes, I did.

Q Who?

A Detective Daly and Police Officer Rinaldi.

Q Police Officer Rinaldi?

A Yes, sir.

Q Who was the arresting officer in this case as far as you know?

A He was arrested by members of the group. I don't think anyone in particular.

Q Are you familiar with the way the New York City Police Department operates?

A Yes.

Q That someone catches a case, so to speak?

A Yes.

Q And he is designated the arresting officer?

A That's correct.

Q Do you know who caught this case, so to speak?

A We don't operate in that manner.

Q In other words, there is no one individual that is responsible for any one arrest?

A That's basically correct.

Q Is there anybody designated, for example, to preserve evidence?

A Yes, sir.

Q Did you know what you were looking for that day before you went to the restaurant or what you would be looking for?

A Yes,sir.

Q What were you looking for?

A Three and a half ounces of cocaine.

Q Wasn't anybody curious to see whether or not that had been taken if it existed?

A Yes, sir. I was.

Q Did you ask anybody where is the cocaine?

A I assumed it was taken by the arresting officers.

Q Who were the arresting officers?

A People who actually placed Mr. Weindling and Ms. McIntyre into custody.

Q Did you ask anybody where is the goods, so to speak?

A Yes.

Q Whom did you ask?

A I asked other officers.

Q Give me their names.

A I asked Special Agent Panessa.

MS. COTE: Excuse me. May we have that question phrased within a time frame.

MR. ANOLIK: It's right after the arrest.

THE COURT: At some time following the arrest.

A Immediately after the arrest I didn't ask anybody.

Q When was the first time you became curious to see whether or not they had seized any drugs?

MS. COTE: Objection to the phrasing of that question.

THE COURT: I sustain that.

Q When for the first time did you think to inquire as to whether or not --

MS. COTE: Objection, your Honor.

THE COURT: Overruled.

Q -- drugs were seized?

A On the way back to the office.

Q How soon after the arrest would that have been?

A Five minutes.

Q At that time you spoke to whom?

A We went back to the office and I got Special Agent Panessa through the base radio, I spoke with Detective Minichiello, I spoke with Detective DeRosa, Hansen, Rinaldi, Daly. In short, anybody who was connected with the surveillance operation. And I also opened Mr. Weindling's briefcase at that time in an attempt to discover the drugs, and it was at this time that I made the inquiries.

Q Are you aware of the fact that it was not until three-quarters of an hour later that someone got back to the restaurant to look for the goods?

A Yes, sir. I am not aware of what time it was. I know it was a period of time later.

Q Do you know why there was a delay in getting back?

A I believe the defendants themselves had to be physically searched and after it was determined we didn't have the drugs, they were sent back to the restaurant.

Q Let me ask you this: When a person is arrested, isn't there an immediate search made of the person?

A No.

Q Aren't you concerned that maybe they have a gun or something?

A There is a brief search given but not a thorough search.

Q It was a pat-down?

A Yes.

Q When you refer, for example, to a strainer,as you testified was found in Exhibit 3B -- do you describe this as a strainer?

A Yes.

MR. BELLER: I am not familiar with that paraphernalia.

MR. ANOLIK: Neither am I.

Q This is a very fine strainer, is it not?

A Yes, sir.

Q That could be used by a person who may be a user of cocaine, isn't that possible?

A Yes, sir.

Q Did you know whether or not Mr. Weindling was a user?

A I believe the informant instructed me he used cocaine.

Q How long have you been in the narcotics prosecution field?

A Five and a half years.

Q Did you receive a special training?

A Yes, sir, I did.

Q You participated in a number of cases?

A Yes, sir.

Q You are with the Drug Enforcement Administration, are you not?

A I am.

Q Can you tell me, if you know, whether or not cocaine is an addictive drug in the same sense as heroin?

A To my knowledge I have been told by people who are -- informants who use it, and such, and defendants and chemists, they have instructed me that physically it is not supposed to be addictive. Psychologically it is supposed to be addictive.

Q A dependency may be developed?

A That's right.

Q But it is not addictive in the same sense as heroin?

A That's correct, to my knowledge.

Q Did there come a time that you searched the defendant's person?

A Yes, sir.

Q Was it you who conducted that search?

A Myself and others.

Q At any time did you learn the whereabouts of this person you described as Jose?

A Besides the fact that he came from the West Side of New York, the answer would be no.

Q To this day do you know who Jose is?

A No, I do not.

Q Do you know whether he even exists?

A No, I do not.

Q Did Mr.Weindling ever mention the name of a Patricia Thomas to you?

A He did not.

Q Have you heard that name before?

A Yes, I have.

Q How recently?

A Very recently.

Q About how recently?

A Within the last few days.

Q The arrest took place in April and during the last few days you first heard that name?

A That's correct.

Q Did you go back to the restaurant with the other officers or not?

A No, sir.

Q Did they report to you?

A Yes.

Q As a result of their report to you, can you tell me whether or not you uncovered any cocaine? Did they bring any cocaine to you?

A They did not.

Q Can you tell me whether or not when an arrest is made all of the property of the defendant is seized at that time, in his immediate vicinity?

A Yes.

Q Do they look around to see if there is anything in the vicinity?

A Most of the time they do.

Q If there was three and a half ounces of cocaine on the table, in your experience as an officer, do you think they would have seen it?

A Yes.

Q Have you spoken to Investigator Hansen in connection with this case?

A Yes, sir.

Q Do you know whether or not he was the one who made the arrest of Ms. McIntyre?

A I believe he was.

Q Did he explain to you the circumstances of how he made that arrest?

A Yes, he did.

Q Are you aware of the fact that she was arrested while making a telephone call?

A Yes, sir.

Q When was it for the first time, as far as you know, that Mr.Weindling was permitted to make a phone call, if he ever was?

A Some time in the processing room, I would say perhaps -- I can't say for sure. I would say within forty-five minutes to an hour after he got there.

Q Was it before you interviewed him or after?

A After.

Q When you interviewed him and told him his Miranda rights, that he had a right to an attorney, that if he didn't want to talk to you without an attorney, he didn't have to, that if he wanted to call an attorney he could, did you ever say to him, "Moses", or "Mr.Weindling, here's my telephone. Call an attorney if you want to"?

MS. COTE: Objection, your Honor.

THE COURT: Sustained.

Q Did you ever offer him the use of a telephone?

MS. COTE: Objection, your Honor.

THE COURT: I sustain that.

Q Did you ever forbid him to use a telephone?

A No,sir, I did not. I told him he could use it when we were done printing him.

Q Meanwhile you were talking to him?

A That's correct. After I gave him his rights.

Q Is it not a fact that you were seeking the cooperation of Mr.Weindling in this case?

A That's correct.

Q Can you tell me whether or not a car was taken in connection with this case?

A Yes, sir, it was.

Q Is that standard procedure for a car to be seized?

A The procedure is, if I may state it, that any time a car, a vehicle, is used in furtherance of a narcotics sale or possession, that car will be seized by the Government.

Q That's standard procedure?

A Yes.

Q Did you ask Mr.Weindling --

MS. COTE: Objection. That's the law, not just standard procedure.

MR. ANOLIK: I don't doubt that. I assume standard procedure means it's the law.

THE COURT: Let's not assume that either.

Q This particular briefcase that was broken open, is that correct?

A Yes.

Q Did you ask Mr. Weindling for a key to it?

A No.

Q Any reason for that?

A Time element basically. We were looking for the narcotics. I had to deploy the men to go back to the restaurant. I wanted to know if the narcotics were there after checking with Detective Minichiello and other officers.

Q This was broken open where?

A At the processing room.

Q Mr. Weindling was present?

A He was not.

Q Do you know whether or not in connection with this case any telephone calls were ever placed to Mr. Weindling?

A Repeat the question.

Q In connection with your investigation of this case were any telephone calls ever placed by either you or the cooperating individual in your presence to Mr. Weindling?

A Yes.

Q Do you know whether or not any recordings of that was made?

A Yes.

Q Do you have those recordings?

A Yes.

Q Do they show anything?

A The recording didnot record properly.

Q They turned out to be nothing?

A That's right.

Q Were you instructed by Assistant United States Attorney in this office -- when I say "this office" I mean the Southern District of New York -- either Ms. Cote or someone else to conduct an investigation involving a

Patricia Thomas?

A Yes, sir.

Q That was some time just a few days ago, is that correct?

A Within the last week would be more accurate.

Q This being Thursday, it would mean some time between last Thursday and this Thursday?

A Approximately.

Q That was not a decision that you made yourself, is that correct?

A That's correct.

Q You are a trained specialist in this field?

A Correct.

MR. ANOLIK: I have no further questions of this witness.

CROSS-EXAMINATION

BY MR. JOY:

Q Mr.Sandler, was Patty McIntyre searched after the arrest?

A Yes, sir.

Q Were any drugs found on her person?

A No, sir.

Q I take it she was searched by a female some place?

A Yes, sir.

Q [illegible]at was a complete search?

A Yes, sir.

Q Was her bag searched?

A Excuse me?

Q Was her bag searched?

A Yes, it was.

Q Was the bag taken away from her?

A Yes, it was.

Q It was searched at that time?

A At what time?

Q When it was taken away from her.

MS. COTE: Could the questions indicate whether or not the special agent is testifying of his own knowledge or what he has heard of other officers and agents in this case.

MR. JOY: I want to find out whether the bag was searched.

Q You indicated it was searched?

A Yes, sir.

Q Do you know where it was searched?

A In the processing room, I believe.

Q At that time did you make an inventory of the things you got from the purse?

A No, sir.

Q Isn't it normal procedure to make an inventory of what is taken from a purse or other items that are searched?

A It would be if she was going to be incarcerated overnight, but because she was not, it was not done.

Q In other words, because she was not incarcerated you didn't make an inventory of what was in the bag?

A Correct.

Q Did you make the search of the bag?

A No, sir.

Q Who made the search of the bag?

A I don't recall.

Q But it was somebody on your team?

A Yes, sir.

Q How about Mr.Weindling, were things taken from him?

A Yes.

Q From his person?

A Yes, sir.

Q Was an inventory made of the things that were taken from his person?

A His funds were counted and made an inventory of.

Q You made an inventory of his funds?

A To the funds which were put on the report.

Q What report is that?

A That would be the 202, the personal history sheet of anyone who is arrested.

Q Was anything else taken from Moses Weindling?

A You mean on his person?

Q Yes.

A Not that I can recall.

Q He was incarcerated overnight?

A Yes.

Q You just testified when that happens you make an inventory of things that are taken from somebody who is being incarcerated.

A I am sure it was done. I don't recall the procedure in this case.

Q You are sure it was done?

A Yes.

Q So that document exists some place, is that right?

A Anything taken from him would have been listed on an evidence envelope and returned to him the following day at AUSA's office when he was interviewed.

Q Were things returned to Mr. Weindling the next day?

A I don't recall in this case. I believe they were.

Q You were present, were you not?

A But I don't recall.

Q Doesn't the person to whom these are being returned have to sign off a receipt that he has received back the money or other objects that have been taken?

A That's true, but in this case I don't recall the actual procedure.

Q I think you mentioned with regard to the non-addictive nature of cocaine, that it created a psychological dependency.

A Yes.

Q That is psychological and not physical. In the same way that some people have a psychological dependency or need for alcohol.

A I would agree with that.

Q Were you on surveillance duty on the 27th, on April 27th?

A Yes.

Q Whare were you?

A In the general location of Sixish Restaurant which is on First Avenue and 88th Street.

Q Where were you?

A I was with Detective Daly. We were in a vehicle cruising around this area.

Q Did you have a meeting before you went out to The Sixish Restaurant?

A Yes.

Q Who was at that meeting?

A Myself, Police Officer Rinaldi, Detective Daly, Detective Minichiello, and the informant.

Q Did you discuss what the operation would be that night?

A Yes, sir.

Q You knew at that time you were going to The Sixish Restaurant?

A At the time of the meeting?

Q Pardon?

A At the time of the meeting?

Q Yes.

A No, sir, I did not know.

Q When did you learn where you were going to be going?

A After the informant placed a telephone call to Mr.Weindling.

Q Where was that?

A On an open telephone booth very close to Mr.

Weindling's restaurant, near East 89th Street.

Q Were you present?

A I was a block away.

MR. ANOLIK: He said Mr. Weindling's restaurant.

A Residence.

Q Did you cruise around during a certain period that night?

A Yes, sir.

Q Did you park anywhere?

A Yes, sir.

Q Officer Daly was in the same car with you?

A That is correct.

Q Did you observe anyone leave The Sixish Restaurant?

A No, sir.

Q Did Officer Rinaldi leave The Sixish Restaurant?

A Yes.

Q Did you see him come out?

A No.

Q He told you he came out?

A Yes, sir.

Q Did there come a time when you returned to headquarters that night?

A No, sir. I believe I was on another case that night.

Q How long did you remain on surveillance on that evening of The Sixish Bar?

A About three-quarters of the way through it.

Q From when to when?

A I think the total time was approximately forty-five minutes.

Q What time did you leave?

A I don't recall.

Q Do you know what time you got there?

A I believe it was five-thirty in the afternoon, but I'm not sure.

Q From the time you got there to the time you left you saw nobody leave, is that right?

A That's correct.

Q On the 28th you had a meeting before you went out to The Grass Restaurant, is that right?

A That's correct.

Q And that consisted essentially of all the members of the team that were going to be in the operation that day?

A And the informant, yes.

Q Did you discuss what everybody's role would be?

A Yes, sir.

Q Specifically what was your role to be?

A My role was to be arresting officer and a surveillance officer.

Q That means that you were to make the arrest if any was to be made?

A I would be one of the members to make the arrest.

Q I take it so would every other members of the team, right?

A Well, the people inside the restaurant would actually make the arrest. You have to be flexible because situations can move from one location to another, but we had planned it to make the arrest, the officers inside the restaurant at the time would make the arrest.

Q Before you went out you searched the informant, is that right?

A Yes, sir.

Q The reason you do that is because you suspect he might have drugs on him?

A No, sir.

Q Why did you search him then?

A It is our procedure to search.

Q The reason that you have a procedure is so that you can be sure he's not carrying drugs, is that right?

A That's correct.

Q Did you search any of the other members of the team?

A You mean the police officers?

Q Yes.

A No, sir.

Q There came a time when you arrived at The Grass Restaurant on the 28th, is that right?

A Yes, sir.

Q Would you tell us what you did?

A Myself, Detective Daly and Special Agent Panessa sat in one of the back tables and we had lunch.

Q Do you recall who paid for the lunch?

A Which lunch, sir?

Q The lunch you said the three of you had.

A The three of us paid for the lunch.

Q In other words,you divided it up?

A Yes, sir.

Q I assume this is at taxpayers' expense, is that right?

A Yes, sir.

Q Each one of you then files an expense report, is that right?

A That's correct.

Q At lunch how many drinks did you have?

A Two or three.

Q Were you drinking?

A I don't recall what I drank that day. I know what I usually drink.

Q You had some drinks that cost two bucks apiece, is that correct?

A Anything in that place costs about two dollars.

Q You in fact had three drinks, is that right?

A Okay.

Q Did each of the officers you were with have three drinks?

A I don't recall.

Q Did you drink alone?

A I was not counting their drinks.

Q You would order a round and they would order a round and you would have some drinks --

MS. COTE: Asked and answered.

THE COURT: Objection sustained.

Q Did there come a time when you saw Patty McIntyre?

A Yes,sir.

Q When was that for the first time?

A Fifteen minutes after I had arrived in the restaurant.

Q Where were you in relation to her?

A When, sir?

Q When you first saw her.

A She was coming through the door and I was seated in the back.

Q Did there come a time when she sat down?

A Yes, sir.

Q How close to you did she sit down?

A She was adjacent to me.

Q She was at the next table?

A Yes, sir.

Q How long after she sat down did you remain at the table, the next table?

A Anywhere from forty-five minutes to an hour.

Q That I take it was from 2:30 to 3:30 approximately?

A Yes, sir.

Q Did you get a good look at Patty McIntyre?

A Yes, sir.

Q Again you are trained to look at people with an eye to giving a description or remembering what a person looks like later.

A Yes, sir.

Q Did you give anybody a description of Patty McIntyre?

A Not that I can recall.

Q Did you prepare any report? I show you 3506D. I ask you whether that is your report.

A Yes, it is.

Q On the second page of that report does that contain a description--

A Yes, sir.

Q --of the defendant, Patty McIntyre?

A Yes, it does.

Q Would you tell us what that description is?

A "Female, Caucasian, approximately five foot nine, 120, 122 pounds, blonde hair, blue eyes".

Q And the blue eyes come from your observation of her?

A Yes, sir.

Q You were sure of that?

A Very much.

Q Would you come down and take a look at Ms. McIntyre's eyes.

MS. COTE: The Government will stipulate they are brown.

Q In other words, what you really did was copy someone else's report?

A No, sir.

Q This is based on your observation?

A Yes, sir.

Q And you didn't copy another officer's report that made exactly the same mistake, isn't that right?

A That's correct. I did not.

Q In other words, what you are saying is that two officers trained to observe to be able to report have made the identical mistake that she had blue eyes, is that your testimony?

MS. COTE: Objection, your Honor.

THE COURT: Sustained.

MR. JOY: I have no further questions.

MR. ANOLIK: I have no further questions.

THE COURT: Any redirect?

REDIRECT EXAMINATION

BY MS. COTE:

Q You testified on cross-examination there was a recording that was made at a telephone booth on the street, I believe. Were there any other recordings used in this investigation?

A No, Ma'am.

Q Why did the recording that was made on that street corner not work?

MR. ANOLIK: I will object to the "why".

THE COURT: Overruled.

Q If you know.

MR. ANOLIK: Now I withdraw the objection.

THE COURT: You may answer.

A I believe that the piece of wire that goes into the microphone section was not 100 per cent in the hole.

Q You testified on cross-examination that the first time you inquired as to whether or not the three and a half ounces of cocaine had been seized was approximately five minutes after you left Grass Restaurant. Do you remember?

A Yes.

Q Shortly after that you described for the jury the number of officers and agents you contacted and the number of things you did to find out if anyone else had seized that three and a half ounces.

A Yes.

Q Did that take place in that five minutes after you left Grass or was that at some other time?

A I had to wait until I got back to the office to organize the hunt for the narcotics.

Q Can you give us an estimation how long after you left Grass it was that you finally determined that no one else had seized the three and a half ounces?

A Twenty-five, thirty-five minutes.

MS. COTE: No further questions.

THE COURT: You are excused.

(Witness excused.)

THE COURT: Ladies and gentlemen, the clock is now accurate. We will recess until ten in the morning.

Continue to keep an open mind and do not discuss the case with anyone.

(Jury leaves the courtroom.)

THE COURT: Mr. Joy, you are going to take a picture of that?

MR. ANOLIK: My client is a photographer. He will bring a camera in.

MR.JOY: If I can get my investigators, I will have them come over.

THE COURT: 9:45 for the picture taking, please. The jury is coming at 10:00. We will recess at noon until two.

May the record show Mr. Joy has been charged with responsibility for Government Exhibit 5.

(Adjourned to October 28, 1977, at 10:00 A.M.)
